No. 2772 2

United States

Circuit Court of Appeals

For the Ninth Circuit.

RIVERSIDE HEIGHTS ORANGE GROWERS' ASSOCIATION, a Corporation, and GEORGE D. PARKER,

Appellants,

vs.

FRED STEBLER,

Appellee.

Transcript of Record.

Upon Appeal from the United States District Court for the Southern District of California, Southern Division.

Filmer Bros. Co. Print, 330 Jackson St., S. F., Cal.

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INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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Names and Addresses of Attorneys.

For Appellants:

NICHOLAS A. ACKER, Esq., Foxcroft Building, 68 Post St., San Francisco, California.

For Appellee:

FREDERICK S. LYON, Esq., Merchants Trust Building, Los Angeles, California.

[4*]

[Citation on Appeal.]

UNITED STATES OF AMERICA,—ss.

The President of the United States to Fred Stebler, Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the city of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to an order allowing an appeal of record in the clerk's office of the United States District Court for the Southern District of California, Southern Division, wherein Riverside Heights Orange Growers' Association and George D. Parker, are appellants and you are appellee, to show cause, if any there be, why the decree rendered against the said appellants as in the said order allowing appeal mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable OSCAR A. TRIPPET, United States District Judge for the Southern

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*Page-number appearing at foot of page of original certified Record.

District of California, Southern Division, this 28th day of December, A. D. 1915.

OSCAR A. TRIPPET,
United States District Judge. [5]

[Endorsed]: In Equity. C. C. No. 1562. United States District Court for the Southern District of California, Southern Division. Riverside Heights Orange Growers' Association and George D. Parker, Appellants, vs. Fred Stebler, Appellee. Citation on Appeal. Filed Dec. 28, 1915. Wm. M. Van Dyke, Clerk. By Leslie S. Colyer, Deputy Clerk.

In the District Court of the United States, in and for the Southern District of California, Southern Division.

C. C. 1562.

FRED STEBLER,
Complainant,

vs.

RIVERSIDE HEIGHTS ORANGE GROWERS' ASSOCIATION, GEORGE D. PARKER, and PARKER MACHINE WORKS,
Defendants. [6]

United States Circuit Court, Southern District of California, Southern Division.

IN EQUITY.

FRED STEBLER,

Complainant,

vs.

RIVERSIDE HEIGHTS ORANGE GROWERS' ASSOCIATION, GEORGE D. PARKER and PARKER MACHINE WORKS,

Defendants.

Bill of Complaint.

To the Honorable the Judges of the Circuit Court of the United States for the Ninth Circuit, Southern District of California, Southern Division:

Fred Stebler, a citizen of the State of California and resident of Riverside, California, brings this his Bill of Complaint against Riverside Heights Orange Growers' Association, a corporation organized and existing under and by virtue of the laws of the State of California, and having its principal place of business in Riverside, California, George D. Parker, a resident of Riverside, California, and Parker Machine Works, a corporation organized and existing under and by virtue of the laws of the State of California, and having its principal place of business in Riverside, California, and thereupon, complaining, showes unto your Honors: [7]

I.

That heretofore, to wit, prior to the 28th day of

April, 1902, one Robert Strain, of Fullerton, California, was the original, first and sole inventor of a certain new and useful FRUIT GRADER, not known or used by others before his invention or discovery thereof; or patented or described in any prior publication in the United States of America or any foreign country before his invention or discovery thereof, or more than two years prior to his application for letters patent thereon in the United States of America, as hereinafter set forth, or in public use or on sale in the United States for more than two years prior to his said application for letters patent of the United States therefor, and not abandoned.

II.

That said Robert Strain so being the original, first and sole inventor of said fruit grader, to wit, on the 28th day of April, 1902, made application in writing, in due form of law, to the Commissioner of Patents of the United States of America, in accordance with the then existing laws of the United States of America in such case made and provided, and complied in all respects with the conditions and requirements of said law, and thereafter, and prior to the 9th day of June, 1903, by an instrument in writing, in due form of law, duly signed by said Robert Strain, and by him delivered to your orator, Fred Stebler and Austin A. Gamble, of Riverside, California, the said Robert Strain did sell, assign, transfer and set over unto your said orator and the said Austin A. Gamble, the full and exclusive right, title and interest in and to the said invention and in and to the letters patent to be granted and issued there-

for, [8] and did authorize and request the Commissioner of Patents to issue said letters patent jointly to your orator and the said Austin A. Gamble; that said instrument in writing was, to wit, prior to June 9th, 1903, duly and regularly recorded in the United States Patent Office; that thereafter such proceedings were duly and regularly had and taken in the matter of such application that, to wit, on June 9th, 1903, letters patent of the United States of America, No. 730,412, were duly and regularly granted and issued and delivered by the Government of the United States of America to your orator and the said Austin A. Gamble, whereby there was granted and secured to your orator and the said Austin A. Gamble, their heirs, legal representatives and assigns, for the full term of seventeen years (17), from and after said 9th day of June, 1903, the sole and exclusive right, liberty and privilege of making, using and vending to others to be used the said invention through the United States of America and the territories thereof; that the said letters patent were duly issued in due form of law under the seal of the United States Patent Office and duly signed by the Commissioner of Patents, all as will more fully appear from said original letters patent or a duly certified copy thereof which are ready in court to be produced by your orator, as may be required; and that prior to the grant, issuance and deliverance of the said letters patent all proceedings were had and taken which were required by law to be had and taken prior to the issuance of letters patent for new and useful inventions.

III.

And your orator further shows unto your Honors that on October 12th, 1903, the said Robert Strain and your orator and [9] the said Austin A. Gamble discovered for the first time that the said letters patent were inoperative and insufficient, and that the errors which rendered said letters patent No. 730,412 so inoperative and insufficient arose from the inadvertence, accident and mistake of the Commissioner of Patents of the United States and without any fraudulent intention on the part of the said Robert Strain, or upon the part of your orator, or upon the part of said Austin A. Gamble; that said inadvertence, accident and mistake upon the part of the said Commissioner of Patents of the United States consisted in this, that after the said Robert Strain had duly filed in the United States Patent Office his application for letters patent upon the said fruit grader, as aforesaid, one Charles Rayburn, did on August 18th, 1902, file in the United States Patent Office an application for letters patent upon said new and useful fruit grader and in said application did make certain claims as the original, true and first inventor thereof; that through the inadvertence, accident and mistake of the Commissioner of Patents a patent was issued to the said Charles Rayburn therefor, said letters patent being numbered 726,756, and were granted, issued and delivered to the said Charles Rayburn on April 28th, 1903, and while the said Robert Strain's application for letters patent was pending in the United States Patent Office, as aforesaid, and the Commissioner of Patents did by

inadvertence, accident and mistake fail and neglect to give notice to the said Robert Strain, or your orator, or said Austin A. Gamble, of said Charles Rayburn's application for letters patent upon said fruit grader, and did fail and neglect to declare an interference proceeding between said Robert Strain and Charles Rayburn or the application of said Robert Strain and Charles Rayburn for letters patent upon [10] said fruit grader, and did fail and neglect to determine whether the said Robert Strain or the said Charles Rayburn was the original, first and sole inventor of said fruit grader, and did fail and neglect to determine the question of priority of invention between said Robert Strain and said Charles Rayburn; that said Robert Strain and your orator and the said Austin A. Gamble first discovered this inadvertence, accident and mistake upon the part of the Commissioner of Patents on October 12th, 1903, and did forthwith immediately direct their attorneys to prepare an application for a reissue patent upon said Robert Strain's said invention in fruit grader; that said Robert Strain did make due application in writing, in due form of law, for a reissue of said letters patent, which said application was filed in the United States Patent Office on October 21st, 1903, by the said Robert Strain with the full consent and allowance of your orator and the said Austin A. Gamble, and that thereafter due proceedings were had in the United States Patent Office in accordance with the Statutes in such cases made and provided, and in accordance with the rules of the United States Patent Office, and that said Robert

Strain was adjudged to be the original, first and sole inventor of said fruit grader, and judgment of priority of invention was rendered and entered in the United States Patent Office in favor of Robert Strain and against said Charles Rayburn; and thereafter, to wit, on December 27th, 1904, the said Robert Strain and your orator and the said Austin A. Gamble having in all respects complied with the Acts of Congress in such case made and provided, and having surrendered the said orginal letters patent No. 730,412, said letters patent were cancelled and new or amended Letters Patent which were marked "Reissue No. 12,297" were on the 27th day of December, 1904, in due form of law, granted, issued, and delivered to your orator [11] and the said Austin A. Gamble, which said reissue letters patent are of record in the Patent Office of the United States, as will more fully and at large appear from said original reissued letters patent or a duly certified copy thereof ready here in court to be produced, whereby there was granted and secured to your orator and the said Austin A. Gamble, their heirs, legal representatives and assigns, for the full term of seventeen years (17) from and after the 9th day of June, 1903, the sole and exclusive right, liberty and privilege of making, using and vending the said invention as described and claimed in said reissued letters patent throughout the United States of America and the territories thereof.

IV.

And your orator further shows unto your Honors that the said invention so set forth, described and

claimed in and by the said letters patent aforesaid is of great value and has been extensively practiced by your orator and by your orator and the said Austin A. Gamble, and that since the grant, issuance and delivery of the said letters patent the said fruit grader has gone into great and extensive use and your orator and said Austin A. Gamble have sold large numbers thereof and the same has substantially displaced all other forms of devices for said purpose and become the standard fruit grader; and upon each and every one of said fruit graders manufactured, used or sold by your orator or by your orator and said Austin A. Gamble, as aforesaid, your orator, and your orator and the said Austin A. Gamble have marked in bold and conspicuous letters the word "Patented," together with the day and date of issuance of said letters patent, to wit, June 9th, 1903, and December 27th, 1904, thereby notifying the public of said letters patent, and the trade and public have generally [12] respected and acquiesced in the validity and scope of said letters patent and of the exclusive rights of your orator, and of your orator and said Austin A. Gamble therein and thereunder, and save and except for the infringement thereof by defendants as hereinafter set forth your orator, and your orator's assignors, have had and enjoyed the exclusive right, liberty and privilege, since December 27th, 1904, of manufacturing, selling and using fruit graders embodying and containing the invention described in, set forth and claimed in said letters patent, and but for the wrongful and infringing acts of defendants, as hereinafter set forth,

your orator would now continue to enjoy the said exclusive rights and the same would be of great and incalculable benefit and advantage to your orator, and the said defendants have been, long prior to the commencement of this suit, notified in writing of the grant, issuance and delivery of the said letters patent and of the rights of your orator thereunder, and have had full knowledge of your orator's said rights under said letters patent, and demand has been made upon defendants to respect the said letters patent and not to infringe thereon, but notwithstanding such notice the defendants have continued to make, use and sell fruit graders embodying the said invention, as hereinafter more particularly set forth.

V.

Your orator further shows unto your Honors that heretofore, to wit, prior to the first day of January, 1910, by an instrument in writing in due form of law, duly signed by the said Austin A. Gamble, and delivered by him to your orator, the said Austin A. Gamble did sell, assign, transfer and set over unto your orator, his heirs and assigns, all his right, title and interest in and to the said fruit grader invention and in and to the said letters patent aforesaid granted and issued therefor, and did thereby sell, [13] assign, transfer and set over unto your orator, and vest in your orator, and *you* orator did become the sole and exclusive owner of the full and exclusive right, title and interest in and to the said fruit grader invention and in and to the said letters patent granted and issued therefor, all as will more fully and at

large appear from said original instrument in writing or a duly certified copy thereof ready in court to be produced as may be required.

VI.

And your orator further shows unto your Honors that notwithstanding the premises, but well knowing the same, and without the license or consent of your orator, and in violation of said letters patent, and of your orator's rights thereunder, the said defendants herein have within the year last past and in the Southern District of California, to wit, in the county of Riverside, State of California, and elsewhere, made, used and sold to others to be used, and are now making, using and selling to others to be used fruit graders embodying, containing and embracing the invention described and claimed and patented in and by said reissued letters patent, and have infringed upon the exclusive rights secured to your orator by virtue of said reissued letters patent, and that the fruit graders so made, used and sold by defendants were and are infringements upon said letters patent and each of said fruit graders contains in it the said patented invention, and that although requested so to do defendants refuse to cease and desist from the infringement aforesaid and are now making, using and selling fruit graders containing and embracing the said patented invention and threaten and intend to continue so to do, and will continue so to do unless restrained by this [14] Court, and are realizing, as your orator is informed and believes, large gains, profits and advantages, the exact amount of which is unknown to your orator; that by reason of the prem-

ises and the unlawful acts of the defendants aforesaid, your orator has suffered and is suffering great and irreparable damage and injury; that for the wrongs and injuries herein complained of your orator has no plain, speedy or adequate remedy at law and is without remedy save in a court of equity where matters of this kind are properly cognizable and relievable.

To the end therefore that the said defendants, Riverside Heights Orange Growers' Association, George D. Parker and Parker Machine Works, may, if they can, show why your orator should not have the relief herein prayed, and may according to the best and utmost of their knowledge, recollection, information and belief, but not under oath, (an answer under oath being hereby expressly waived), full, true, direct and perfect answer make to all and singular the matters and things hereinbefore charged; your orator prays that the defendants may be enjoined and restrained, both provisionally and perpetually, from further infringement upon the said letters patent, and be decreed to account for and pay over unto your orator the gains and profits realized by defendants from and by reason of the infringement aforesaid, and may be decreed to account for and pay over unto your orator the damages suffered by your orator by reason of the said infringement, together with the costs of this suit, and for such other and further or different relief as equity and good conscience shall require.

May it please your Honors to grant unto your orator a writ of injunction issued out of and under

the seal of this Court, provisionally, and until the final hearing, enjoining and restraining said defendants, Riverside Heights Orange Growers' [15] Association, George D. Parker and Parker Machine Works, their agents, attorneys, associates, servants, and employees, and each and every thereof, from making, using and selling any fruit graders containing or embracing the invention patented in and by said letters patent, and that upon the final hearing of this case said provisional injunction may be made final and perpetual.

May it please your Honors to grant unto your orator a writ of subpoena of the United States issued out of and under the seal of this Court and directed to the said defendants, Riverside Heights Orange Growers' Association, George D. Parker, and Parker Machine Works, commanding them by a day certain and under a certain penalty fixed by law, to be and appear before this Honorable Court, then and there to answer this Bill of Complaint and to stand to and perform and abide by such further orders and decrees as to your Honors may seem meet in the premises.

And your orator will ever pray.

FRED STEBLER.

FREDERICK S. LYON,
Solicitor and of Counsel for Complainant,
503–8 Merchants Trust Company Building,
Los Angeles, California.

United States of America,
State of California,
County of Riverside,—ss.

Fred Stebler, being duly sworn, on oath, says, that he is the complainant named in the foregoing Bill of Complaint, that he has read said Bill of Complaint and knows the contents thereof [16] and that the same is true of his own knowledge.

FRED STEBLER.

Subscribed and sworn to before me this 23d day of May, 1910.

[Seal] WM. STUDABECKER,
Notary Public in and for Riverside County, State of California.

[Endorsed]: No. 1562. United States Circuit Court, Southern District of California, Southern Division. Fred Stebler, Complainant, vs. Riverside Heights Orange Growers' Association, George D. Parker and Parker Machine Works, Defendants. In Equity. Bill of Complaint. Filed May 24, 1910. Wm. M. Van Dyke, Clerk. Chas. N. Williams, Deputy. Frederick S. Lyon, 504–7 Merchants Trust Building, Los Angeles, Cal., Solicitor for Complainant. [17]

In the United States Circuit Court, Southern District of California, Southern Division.

IN EQUITY—No. 1562.

FRED STEBLER,

Complainant,

vs.

RIVERSIDE HEIGHTS ORANGE GROWERS' ASSOCIATION, GEORGE D. PARKER, and PARKER MACHINE WORKS,

Defendants.

Answer.

The answer of the Riverside Heights Orange Growers' Association, George D. Parker, and Parker Machine Works, defendants, to the Bill of Complaint of Fred Stebler, complainant.

These defendants, now and at all times hereafter, saving and reserving unto themselves all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in said complainant's said bill of complaint contained, for answer thereto, or unto so much and such parts thereof as these defendants are advised is, or are, material or necessary for them to make answer unto, these defendants for *answering saith;*

1. Admit that the Riverside Heights Orange Growers' Association, one of the defendants herein, is a corporation [18] organized and existing under and by virtue of the laws of the State of California, and having its principal place of business in

Riverside, California, and admits that George D. Parker, another of the defendants herein, is a resident of Riverside, California.

2. Deny that the Parker Machine Works, one of the defendants herein, is a corporation organized and existing under and by virtue of the laws of the State of California, and having its principal place of business in Riverside, California.

3. They deny that the said Robert Strain, mentioned in the Bill of Complaint, prior to the 28th day of April, 1902, or at any other time, or at all, was either the original first and sole inventor of the alleged certain new and useful fruit grader, alleged in the Bill of Complaint to be more particularly described in the alleged letters patent alleged to have been ishsued therefore by the Government of the United States; and they deny that the said improvements, or any of them, were a new or useful invention, or were not known or used by others in this country before the alleged invention or discovery thereof by the said Robert Strain, and deny that the same were not patented or described in any prior publication in the United States of America or any foreign country before his invention or discovery thereof, or more than two years prior to his application for letters patent thereon, in the United States of America, or that the same was not in public use or on sale in the United States for more than two years prior to his said application for letters patent of the United States therefor, or that the same was not abandoned.

4. These defendants, further answering, say that

as to whether or not the said Robert Strain, being as aforesaid the alleged original and first inventor of the said alleged improvement [19] in fruit graders, or otherwise, did on the 28th day of April, 1902, or at any other time, duly or regularly make or file in the Patent Office of the United States, an application in writing, praying for the issuance to him of letters patent of the United States for the said alleged invention, these defendants are not informed save by the Bill of Complaint herein, and they, therefore, deny the same, all and singular, and leave complainant to make such proof thereof as he may be advised is material.

5. These defendants further answering, say that as to whether or not after the filing of the said alleged application in the United States Patent Office, and before the granting of letters patent thereon, or at any other time, the said Robert Strain, by an instrument in writing, in due form of law, or otherwise, duly signed by him, and by him delivered to Fred Stebler, complainant herein, and Austin A. Gamble, of Riverside, California, and duly recorded in the United States Patent Office, or otherwise, the said Robert Strain did sell, assign, transfer and set over unto the said Fred Stebler and the said Austin A. Gamble, *and* full and *excluse* right, title and interest in and to the said invention, or any right, title and interest in and to the same, and in and to the letters patent to be granted and issued therefor, with the request that the letters patent therefor, when granted, should be issued jointly to the said Fred Stebler and the said Austin A. Gamble, they are not

informed save by the Bill of Complaint herein, and they, therefore, deny the same, all and singular, and leave complainant to make such proof thereof as he shall be advised is material. These defendants deny that thereafter, or at any time, such proceedings were duly and regularly taken in the matter of the said alleged application, that, on the 9th day of June, 1903, or at any other time, [20] letters patent of the United States of America, No. 730,412, were duly and regularly granted and issued and delivered by the Government of the United States of America to the said Fred Stebler and the said Austin A. Gamble, or either of them, and deny that the said Fred Stebler and the said Austin A. Gamble, or either of them, or their heirs, legal representatives and assigns, or either of them, were granted for the full term of seventeen years (17) from and after the 9th day of June, 1903, or for any other term, the sole and exclusive right, liberty and privilege of making, using and vending to others to be used the said alleged invention throughout the United States of America and the territories thereof.

6. These defendants further answering, deny that the said alleged letters patent were issued in due form of law, or otherwise, under the seal of the United States Patent Office, or otherwise, or were duly signed by the Commissioner of Patents; and deny that said facts will more fully appear from said alleged patent themselves.

7. These defendants further answering, deny that prior to the issuance of said alleged letters patent, all proceedings were had or taken which were required

to be had and taken prior to the issuance of letters patent for new and useful inventions.

8. These defendants further answering, say that whether the said alleged letters patent No. 730,412, referred to in the Bill of Complaint as having been issued as therein stated, for an improved fruit grader, were inoperative and insufficient, and whether the error by reason of which the same were rendered inoperative and insufficient arose by inadvertence, accident and mistake on the part of the Commissioner of Patents of the United [21] States and without any fraudulent intention on the part of the said Robert Strain, or upon the part of Fred Stebler, complainant herein, or upon the part of the said Austain A. Gamble, they are not informed save by the Bill of Complaint herein, and they, therefore, deny the same, and leave complainant to make such proof thereof as he shall be advised is material.

9. These defendants further answering say that whether the alleged inadvertence, accident and mistake upon the part of the Commissioner of Patents of the United States was occasioned by the fact that after the said Robert Strain had filed in the United States Patent Office his alleged application for letters patent upon said fruit grader, one Charles Rayburn, did on August 18th, 1902, file in the United States Patent Office an application for letters patent upon said new and useful fruit grader and in said application did make certain claims as the original, true and first inventor thereof, and that through the inadvertence, accident and mistake of the Commissioner of Patents a patent was issued to said Charles

Rayburn therefore, said letters patent being numbered 726,756, which were granted, issued and delivered to the said Charles Rayburn on April 28th, 1903, and while the said Robert Strain's application for letters patent was pending in the United States Patent Office, and the Commissioner of Patents did by inadvertence, accident and mistake fail and neglect to give notice to the said Robert Strain, or to Fred Stebler, complainant herein, or to said Austin A. Gamble, of said Charles Rayburn's application for letters patent upon said fruit grader, and did fail and neglect to declare an interference proceeding between said Robert Strain and Charles Rayburn or the applications of said Robert Strain and Charles Rayburn for letters patent upon [22] said fruit grader, and did fail and neglect to determine whether the said Robert Strain or the said Charles Rayburn was the original, first and sole inventor of said fruit grader, and did fail and neglect to determine the question of priority of invention between said Robert Strain and Charles Rayburn, they are not informed save by the Bill of Complaint herein, and they, therefore, deny the same, all and singular, and leave complainant to make such proof thereof as he shall be advised is material.

10. These defendants further answering say that whether the said Robert Strain, and Fred Stebler, complainant herein, and the said Austin A. Gamble first discovered the alleged inadvertence, accident and mistake upon the part of the Commissioner of Patents on October 12th, 1903, and did forthwith and immediately direct their attorneys to prepare an appli-

cation for a reissue patent upon said Robert Strain's said invention in fruit graders, or whether the said Robert Strain did make due application in writing, in due form of law, or otherwise, for a reissue of the letters patent mentioned in the bill of complaint, or whether said alleged application was filed in the United States Patent Office on October 21st, 1903, by the said Robert Strain with the full consent and allowance of Fred Stebler, complainant herein, and the said Austin A. Gamble, or whether thereafter due proceedings were had in the United States Patent Office in accordance with the Statute in such cases made and provided, and in accordance with the rules of the United States Patent Office, or whether the said Robert Strain was adjudged to be the original, first and sole inventor of said fruit grader and judgment of priority of invention was rendered and entered in the United States Patent Office in favor of said Robert Strain and against said Austin A. Gamble, they are not informed save by the Bill of Complaint herein, and they, therefore, deny the same, all and [23] singular, and leave complainant to make such proof thereof as he shall be advised is material.

11. These defendants further answering say that whether the said Robert Strain and Fred Stebler, complainant herein, and Austin A. Gamble having in all respects complied with the Acts of Congress in such cases made and provided, and having surrendered the said original letters patent No. 730,412, said letters patent were cancelled and new or amended letters patent which were marked "Reissue No. 12,297" were on the 27th day of December, 1904,

in due form of law, granted, issued and delivered to Fred Stebler, complainant herein, and the said Austin A. Gamble, which said reissue letters patent are of record in the Patent Office of the United States, they are not informed save by the Bill of Complaint herein, and they, therefore, deny the same, all and singular, and leave complainant to make such proof thereof as he shall be advised is material; and deny that said facts will more fully and at large appear from said original reissue letters patent or a duly certified copy thereof.

12. These defendants deny that the said reissue letters patent No. 12,297 were effective to grant and secure to the said Fred Stebler, complainant herein, and the said Austin A. Gamble, their heirs, legal representatives and assigns, for the full term of seventeen years (17) or for any term, either from and after after the 9th day of June, 1903, or from any other date the sole and exclusive right, liberty and privilege of making, using and vending the said invention as described and claimed in said reissue letters patent throughout the United States of America and the territories thereof.

13. These defendants aver that they are not informed as to whether or not the invention alleged to be contained in the [24] said reissue letters patent No. 12,297 is the same invention as that set forth in the original letters patent No. 730,412, set forth in the Bill of Complaint herein, and they, therefore, deny the same and leave the complainant to make such proof thereof as he shall be advised is material.

14. Further answering, these defendant deny that the alleged invention alleged to be protected by the said alleged reissue letters patent is of great or any value, and deny that since the issuance of the said alleged reissue letters patent, or at any time, the fruit graders mentioned therein have gone into great and extensive use, or have been extensively practiced, or otherwise, and deny that large numbers thereof have been sold, and deny that upon each and every one of said fruit graders manufactured, used or sold by the complainant herein, or by the said complainant and Austin A. Gamble, or by either of them, made in accordance with the said reissue letters patent, has been marked with the word "Patented" together with the date and number thereof, and deny that the public was thereby notified of the same, and deny that the trade and public have generally respected and acquiesced in the validity and scope of said letters patent and the *excluse* right, or any right of the complainant herein, and of the complainant and said Austin A. Gamble, and deny that save and except for the alleged infringement thereof by these defendants, the complainant herein and the complainant and the said Aust*a*in A. Gamble, would have had and enjoyed the exclusive right, liberty and privilege, since December 27th, 1904, or any other time, of manufacturing, selling or using fruit graders embodying and containing the invention described in, set forth and claimed in said letters patent, and deny that but for the alleged wrongful and infringing acts of these defendants, complainant [25] herein would now continue to enjoy the said exclusive rights,

or any rights, at all, and that the same would be of great and *incalculate* benefit and advantage, or any benefit and advantage, to the complainant, and deny that they have been, long prior to the commencement of this suit, notified in writing of the grant, issuance and delivery of the said letters patent and of the rights of the complainant thereunder, and deny that they have had full knowledge of complainant's said rights under said letters patent and that demand has been made upon them to respect the said letters patent and not to infringe thereon, and deny that notwithstanding such alleged notice they have continued to make, use, and sell fruit graders embodying the said alleged invention.

15. Defendants further answering say that whether prior to the first day of January, 1910, or at any other time, by an instrument in writing in due Austin A. Gamble, and delivered by him to the complainant herein, the said Austin A. Gamble did sell, assign, and transfer and set over unto the complainant herein, his heirs, and assigns, all his right, title, and interest in and to the said fruit grader invention and in and to the said letters patent granted and issued therefor, and did thereby sell, assign and transfer and set over unto and did vest in the complainant herein, and complainant did become the sole and exclusive owner of the full and exclusive right, title and interest in and to the said alleged fruit grader invention and in and to the said alleged letters patent granted and issued therefor, they are not informed save by said bill of complaint herein, and

they, therefore, deny the same, all and singular, and leave complainant to make such proof thereof as he may be advised is material, and they deny that said facts will more fully appear from said original instrument in writing or a duly certified copy thereof. [26]

16. These defendants deny that since the issuance of said alleged letters patent, and within the year last past, or at any time, or within the Southern District of California, or at any other place, the defendants herein have made, used and sold to others to be used, and are now making, using and selling to others to be used fruit graders embodying, containing, and embracing the invention described and claimed and patented in and by said reissue letters patent, and deny that they have infringed or are now infringing, or threaten to continue to infringe upon the alleged exclusive rights alleged to be secured to complainant by virtue of said alleged letters patent, and deny that any fruit grader made, used or sold, or sold to others for use, at any time, were or are an infringement upon said alleged letters patent, or contain or embody the said alleged invention.

17. Further answering defendants deny that complainant has requested these defendants to cease or desist from their alleged infringement aforesaid, and deny that they are now making or selling or using fruit graders containing or embracing the alleged invention or any of them, alleged to be patented in and by said alleged letters patent, and deny that unless restrained by the order of this Honorable Court they will at any time make or sell or use fruit graders

alleged to be described and claimed in said alleged letters patent.

18. These defendants deny that by reason of the premises set up in said Bill of Complaint, or by reason of any unlawful act of the defendants, complainant, has suffered any injury or damage, and deny that they have realized large gains, profits and advantages from and by reason of any alleged infringement of complainant's rights.

19. These defendants further answering, aver that said alleged improvements or inventions described and claimed in the [27] said original letters patent mentioned in the Bill of Complaint, and mentioned in the reissue letters patent thereof, did not and do not constitute any invention or discovery that was or is patentable under the laws of the United States.

20. Defendants further answering aver that in view of the prior state of the art pertaining to fruit graders and the manner of their construction and operation, there was and is no patentable invention contained and embraced in the said alleged improvements described and claimed in the said alleged reissue letters patent sued on herein; but that the same or substantially the same things were well known in the art prior to the alleged invention thereof by the said Robert Strain; and if in the alleged improvements there is anything new or different from what was known or discovered in said prior art, it was not the result of patentable invention, but wholly the result of the ordinary skill of the mechanic, and is of no practical utility.

And for a further and separate defence, these defendants aver that the alleged invention described and claimed in the said alleged reissue letters patent sued on herein, or substantially the same was, long prior to the supposed invention or discovery thereof by the said Robert Strain, indicated, described and patented in and by the following letters patent of the United States, to wit:—

Number.	Date.	Names of Patentees.
No. 247,428	Sept. 20, 1881,	H. B. Stevens
" 348,128	Aug. 24, 1886,	J. W. Keeney
" 352,421	Nov. 9, 1886,	J. S. McKenzie
" 399,509	Mar. 12, 1889,	F. N. Ellithorpe
" 430,031	June 10, 1890,	J. A. Jones
" 442,288	Dec. 9, 1890,	J. A. Jones
[28]		
" 456,092	July 14, 1891,	H. H. Hutchins
" 458,422	Aug. 25, 1891,	J. T. Ish
" 465,856	Dec. 29, 1891,	H. H. Hutchins
" 466,817	Jan. 12, 1892,	E. E. Woodward
" 475,497	May 24, 1892,	G. A. & C. F. Fleming
" 482,294	Sept. 6, 1892,	A. C. Burke
" 529,032	Nov. 13, 1894,	H. C. Jones
" 534,783	Feb. 26, 1895,	A. Cerruti
" 538,330	Apr. 30, 1895,	A. D. Huntley
" 654,281	July 24, 1900,	M. P. Richards
" 671,646	Apr. 9, 1901,	R. G. Bailey
" 673,127	Apr. 30, 1901,	E. N. Maull
" 713,484	Nov. 11, 1902,	C. D. Nelson
" 726,756	Apr. 28, 1903,	C. Rayburn

21. Further answering, defendants aver that said Robert Strain was not the original or first or any inventor or discoverer of the alleged improvements and inventions, or any of them, alleged to be de-

scribed in said alleged letters patent in suit, or of any material or substantial part of the same, but that, on the contrary, prior to the alleged invention thereof by the said Robert Strain, Charles Rayburn, who resides at Visalia, in the county of Tulare, State of California, had conceived and invented each and all of said alleged improvements and inventions, and said Charles Rayburn is the original and first inventor and discoverer of said alleged improvements and inventions, and of each of them.

22. And for a further and separate defence, these defendants aver that the said Robert Strain was not the original and first inventor or discoverer of the improvements or inventions alleged [29] to be described and covered by the said alleged reissue letters patent, nor of any material or substantial parts thereof, but that the same or all material or substantial parts thereof were, prior to the alleged invention thereof by the said Robert Strain, and more than two years prior to his alleged application for letters patent thereon, manufactured and sold in this country, and these defendants specify such manufacture and sale as follows, to wit:

Manufactured and sold by G. G. Wickson, of the city and county of San Francisco, State of California.

23. And for a further and separate defence, these defendants aver that the said alleged improvements and inventions, and each and all of them, had been prior to the alleged invention thereof by the said Robert Strain, and more than two years prior to his alleged application for letters patent thereon, known to and used by the following named persons,

firms, and corporations, at the following places to wit:

Uplands Citrus Association, in its plant at Upland, California; also by the W. H. Jameson Packing Packing House, in its plant at Corona, California; The Arlington Heights Fruit Company, in its plant at Arlington, California; Victoria Avenue Citrus Association, in its plant at Casa Blanca, California; San Jacinto Packing House Company in its plant at Arlington, California; *Pacentia* Orange Growers' Association, in its plant at Fullerton, California; Santiago Orange Growers' Association, in its plant at Orange, California; Indian Hill Citrus Association, in its plant at North Pomona, California, Worthley & Strong, in their plant at Riverside, California; and was known to Charles S. Adams, whose residence is Upland, California; W. H. Jameson, whose residence is Corona, California; Charles Spencer, Edward Gilman, and Ernest Parker, each of Orange, California, and was known to and used by [30] others whose names and places of residences, and the places of such use are at this time unknown to the defendants, but which these defendants crave leave to insert herein and make a part hereof when they shall be discovered.

24. Further answerings, these defendants aver that the public at no time has acquiesced in the validity of the said alleged letters patent in suit, and that the validity of said letters patent has not been adjudicated or established in an action at law; that, therefore, this Court sitting as a court in equity has no jurisdiction of this case, and complainant's relief

in the premises, if to any relief he is entitled, can only be obtained in an action at law.

And, therefore, these defendants submit and insist that under the facts and circumstances as above alleged, the said complainant is not entitled to the relief or any part thereof in the said bill of complaint demanded, nor has said complainant any right to any further answer to said bill nor any part thereof than is above given.

And these defendants pray the same advantage of their aforesaid answer as if they had pleaded or demurred to the said bill of complaint, and they pray leave to be dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

RIVERSIDE HEIGHTS ORANGE GROWERS' ASSOCIATION,
PARKER MACHINE WORKS,
GEORGE D. PARKER,
By N. A. ACKER and
WM. F. BOOTH,
Solicitors and Attorneys for Defendants.
N. A. ACKER and
WM. F. BOOTH,
Solicitors and of Counsel for Defendants.

[31]

[Endorsed]: No. 1562. In the United States Circuit Court, Southern District of California, Southern Division. Fred Stebler, Complainant, vs. Riverside Heights Orange Growers' Association, George D. Parker, and Parker Machine Works, Defendants. Answer. Filed Jul. 26, 1910. Wm. M. Van Dyke, Clerk. Chas. N. Williams, Deputy. N. A. Acker,

Wm. F. Booth, #68 Post St., San Francisco, Cal., Solicitors and Counsel for Defendants. [32]

In the District Court of the United States for the Southern District of California, Second Division.

IN EQUITY—No. 1562.

FRED STEBLER,

Complainant,

vs.

RIVERSIDE HEIGHTS ORANGE GROWERS' ASSOCIATION, GEORGE D. PARKER AND PARKER MACHINE WORKS,

Defendants.

Final Decree.

At a stated term, to wit, the July term, A. D. 1912, of the above-entitled court held at the courtroom thereof in the City of Los Angeles, county of Los Angeles, State of California, on the 17th day of September, 1912.

Present—Honorable OLIN WELLBORN, District Judge.

This cause having heretofore come on regularly to be heard upon the pleading and proofs, documentary and oral, taken and submitted in the case and being of record herein, the complainant being represented by Frederick S. Lyon, Esq., and the defendants by N. A. Acker, Esq., and the cause having been submitted to the Court, for its consideration and decision, and the Court being fully advised in the premises, and it appearing to the Court that

claims 1 and 10 of United States reissue letters patent No. 12,297 (the only claims involved herein) granted Robert Strain—December 27, 1904, for an improvement in fruit graders, as construed by the Court are good and valid in law, and it further appearing to the [33] Court that the defendants have not infringed the said claims—1 and 10 of the reissue letters patent sued upon herein as construed by the Court.

It is ordered, adjudged and decreed that complainant's Bill of Complaint be, and the same is hereby dismissed, and further that the defendants do have and recover from complainant the sum of $383.40, being defendant's proper and necessary costs and disbursements herein.

OLIN WELLBORN,
District Judge.

Decree entered and recorded September 30th, 1912.

WM. W. VAN DYKE,
Clerk,
By Chas. N. Williams,
Deputy Clerk.

[Endorsed]: C. C. No. 1562. U. S. District Court, Southern District of California, Southern Division. Fred Stebler, Complainant, vs. Riverside Heights Orange Growers' Assn. Geo. D. Parker and Parker Machine Works, Defendants. Final Decree. Filed September 30, 1912. Wm. M. Van Dyke, Clerk. By C. E. Scott, Deputy Clerk. Nicholas A. Acker, Attorney at Law, Foxcroft Building, 68 Post Street, San Francisco, Cal., Defendants. [34]

[Mandate of U. S. Circuit Court of Appeals in Stebler vs. Riverside Heights Orange Growers' Association et al., No. 2232.]

UNITED STATES OF AMERICA,—ss.

The President of the United States of America, to the Honorable the Judges of the District Court of the United States of the Southern District of California, Southern Division, Greeting:

(Seal)

Whereas, lately in the District Court of the United States for the Southern District of California, Southern Division, before you, or some of you, in a cause between Fred Stebler, Complainant and Riverside Heights Orange Growers' Association, George *R.* Parker and Parker Machine Works, Defendants, No. 1,562, a Final Decree was duly entered in the 30th day of September, A. D. 1912, dismissing the complainant's Bill of Complaint, etc.; which said final decree is of record in the said cause in the office of the clerk of the said District Court, (to which record reference is hereby made and the same is hereby expressly made a part hereof,) as by the inspection of the Transcript of the Record of the said District Court, which was brought into the United States Circuit Court of Appeals for the Ninth Circuit by virtue of an appeal prosecuted by Fred Stebler as appellant against Riverside Heights Orange Growers' Association, a corporation, and George D. Parker as appellees agreeably to the Act of Congress in such cases made and provided, fully and at large appears:

And Whereas, on the 7th day of March in the year

of our Lord one thousand nine hundred and thirteen the said cause came on to be heard before the said Circuit Court of Appeals, on the said Transcript of the Record and was duly submitted:

On Consideration Whereof, it is now here ordered, adjudged and decreed by this Court, that the decree of the said District [35] Court in this cause be, and hereby is reversed, with costs in favor of the appellant and against the appellees, and that this cause be, and hereby is remanded to the said District Court with instructions to grant the relief prayed for.

It is further ordered, adjudged and decreed by this Court, that the appellant recover against the appellees for his costs herein expended, and have execution therefor. (June 12, 1913.)

You, therefore, are hereby commanded that such execution and further proceedings be had in the said cause in accordance with the opinion and decree of this Court and as according to right and justice and the laws of the United States ought to be had, the said decree of said District Court notwithstanding.

Witness, the Honorable EDWARD DOUGLAS WHITE, Chief Justice of the United States, the 4th day of November, in the year *of Lord* one thousand, nine hundred and thirteen.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

Amount of costs allowed and taxed in favor of the appellant and against the appellees as per annexed

bill of items, taxed in detail: $1,317.83.

F. D. MONCKTON,
Clerk. **[36]**

BILL OF ITEMS ANNEXED TO MANDATE PURSUANT TO SECTION 5, RULE 31.

Debit Item No.	Debit Items.	Dr.	Cr.
1	Docketing Cause and Filing Record.	5.00	
2	Entering 2 Appearance.....	.50	
3	Entering Continuance		
4	Entering 2 Order.....	.40	
5	Filing 14 Papers	3.50	
6	Filing Briefs for Each Party Appearing (2)	10.00	
7	Filing Reply Brief Appellant.....	5.00	
8	Filing.....		
9	Filing Argument.....		
10			
11	Transferring Cause on Printed Calendar (1).....	1.00	
12	Drawing, Filing and Recording Decree or Judgment.....	1.65	
13			
14	Filing Petition for a Rehearing.....		
15			
16	Issuing Certified Copy Order.....	1.40	
17	" " Bond.....	3.40	
18	" " Record.....	14.00	

19	Issuing Mandate, $5.00; Costs and Copy, $0.40	5.40
20		
21	Total Miscellaneous Costs	51.25
22	Expense, Printing Record	791.75
23		
24	Total of Debit Items	843.00

[37]

Credit Item No.	Credit Items.	
1	Deposited Account Misc. Costs Appellant	36.30
2	Deposited Account Misc. Costs Appellee	14.00
3		
4		
5	Expense, Printing Record Appellant	791.75
6		
7	Total of Credit Items	842.05
8	Balance	.95
	Totals	843.00 843.00

Item No.	Itemized Bill of Costs Allowed and Taxed.	Amount.
1	Certified Cost of Transcript from Court Below	371.50

2	Cost of Patents used in said Transcript	1.05
3	Deposit Account Misc. Costs.....	31.50
4	Total Expense, Printing Record.....	791.75
5	Cost of Patents used in Printed Record.	36.75
6	Express charges Re Exhibits, cartage, etc.....	64.33
7	Attorney's Docket Fee.....	20.00
8	Balance costs.....	.95

Total (Inserted in Body of Mandate)
Taxed at.....$1,317.83

Attest: F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit. **[38]**

[Endorsed]: No. 2232. United States Circuit Court of Appeals for the Ninth Circuit. Fred Stebler vs. Riverside Heights Orange Growers' Association, a Corporation, et al. Mandate.

[Endorsed]: C. C. No. 1562. U. S. District Court, Southern District of California, Southern Division. Fred Stebler vs. Riverside Heights Orange Growers' Association et al. Mandate. Filed Nov. 6, 1913. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. **[39]**

[Notice of Presenting of Mandate of Circuit Court of Appeals, etc.]

United States District Court, Southern District of California, Southern Division.

IN EQUITY—CIR. CT. NO. 1562.

FRED STEBLER,

Complainant,

vs.

RIVERSIDE HEIGHTS ORANGE GROWERS' ASSOCIATION, and GEORGE D. PARKER,

Defendants.

To Defendants Above Named and N. A. Acker, Wm. M. Hiatt and H. L. Carnahan, Their Solicitors and Counsel:

Please take notice that on Wednesday, November 7th, 1913, at the opening of said court on said day, to wit, 10:30 A. M., or as soon thereafter as counsel can be heard, complainant will present to said Court the Mandate of the Circuit Court of Appeals for the Ninth Circuit in the above-entitled suit, and move the signing and enrollment of a decree in accordance with such Mandate, a copy of the proposed decree being herewith served upon you.

FREDERICK S. LYON,
Solicitor for Complainant.

Received a copy of the foregoing notice and a copy of the said proposed decree this 6th day of November, 1913.

WILLIAM M. HIATT,
Solicitor and of Counsel for Defendants. **[40]**

United States District Court, Southern District of California, Southern Division.

IN EQUITY—CIR. CT. NO. 1562.

FRED STEBLER,

Complainant,

vs.

RIVERSIDE HEIGHTS ORANGE GROWERS' ASSOCIATION, and GEORGE D. PARKER,

Defendants.

Interlocutory Decree.

Pursuant to the Mandate of the United States Circuit Court of Appeals for the Ninth Circuit, it is hereby ORDERED, ADJUDGED AND DECREED:

First. That the decree herein signed, filed and entered on September 17, 1912, dismissing complainant's Bill of Complaint, be and the same is hereby vacated, set aside, canceled and rescinded and judgment in favor of defendants and against complainant for the sum of $383.40 is vacated, set aside, canceled and rescinded.

Second. That Robert Strain was the original, first and sole inventor of the fruit grader set forth, described and claimed in reissued letters patent of the United States No. 12,297, and particularly as set forth in claims one (1) and ten (10) thereof which are as follows:

Claim 1. "In a fruit grader, in combination a plurality of independent transversely adjustable rotating rollers; a nonmovable grooved guide lying

parallel with the place which passes vertically and longitudinally through the center of said rollers, said rollers and guide forming a fruit runway; a rope in the groove in said guide and means to move said rope."

Claim 10. "In a fruit-grading machine, a runway formed of two parallel members, one of said members consisting of a [41] series of end-to-end rolls, brackets carrying the rolls, guides for the brackets, and means for adjusting the brackets upon the guides, substantially as set forth."

That the same had not been known or used by others before said Robert Strain's invention or discovery thereof or patented or described in any printed publication in the United States of America or any foreign country before said Robert Strain's invention or discovery thereof or more than two years prior to said Robert Strain's original application for letters patent thereon, or in public use or on sale in the United States of America for more than two years prior to said Robert Strain's said application for letters patent thereon, and not abandoned; that said Robert Strain made application in writing in due form of law to the Commissioner of Patents of the United States in accordance with the laws of the United States of America in such case made and provided for letters patent thereon and complied in all respects with the conditions and requirements of such law, and thereafter by an instrument in writing signed by him duly sold, assigned and transferred to complainant Fred Stebler and one Austin A.

Gamble the full and exclusive right, title and interest in and to said invention and in and to the letters patent to be granted and issued therefor; that letters patent of the United States No. 730,412 were on June 9, 1903, granted, issued and delivered by the Government of the United States to said Fred Stebler and Austin A. Gamble whereby there was granted and secured to them, their heirs, legal representatives and assigns for the full term of seventeen years from and after the 9th day of June, 1903, the sole and exclusive right, liberty and privilege of making, using and vending to others to be used the said invention throughout the United States of America and the territories thereof; that said letters patent were issued in due form of law under the seal of the United States Patent Office and **[42]** duly signed by the Commissioner of Patents; that the said letters patent No. 730,412 were inoperative and insufficient by reasons of certain errors and insufficiencies and that the said errors which rendered said letters patent so inoperative and inefficient arose from the inadvertence, accident and mistake of the Commissioner of Patents of the United States and without any fraudulent intention on the part of said Robert Strain or Fred Stebler or Austin A. Gamble; that promptly and diligently upon the discovery of such errors by said Robert Strain, Fred Stebler and Austin A. Gamble said Robert Strain with the consent and allowance of said Fred Stebler and Austin A. Gamble made application for reissued or amended letters patent for said invention, and after due pro-

ceedings had in the United States Patent Office in due accord with the law in such case made and provided on December 27, 1904, reissued or amended letters patent No. 12,297 were on the 27th day of December, 1904, in due form of law granted, issued and delivered to the said Fred Stebler and Austin A. Gamble whereby there was granted and secured to the said Fred Stebler and Austin A. Gamble, their heirs, legal representatives and assigns, for the full term of seventeen years from and after the 9th day of June, 1903, the sole and exclusive right, liberty and privilege of making, using and vending to others to be used the said invention throughout the United States of America and the territories thereof, as described and claimed in said reissued letters patent.

Third. That said reissued letters patent Number 12,297 are good and valid in law, and that said claims one (1) and ten (10) thereof are good and valid in law.

Fourth. That by an instrument in writing, executed by him and delivered to complainant, said Austin A. Gamble sold, assigned and transferred to complainant all said Austin A. Gamble's right, [43] title and interest in, to and under said letters patent and invention and complainant Fred Stebler became and at the commencement of this suit was and now is the sole owner of the full and exclusive right, title and interest in, to and under said letters patent and invention together with all rights of action, claims or demands of whatsoever nature arising out of or accruing from past infringement thereof.

Fifth. That said Fred Stebler and Austin A. Gamble, while owning said letters patent jointly and said Fred Stebler, since said assignment to him by said Austin A. Gamble, have manufactured and sold numbers of fruit graders or sizers embodying said invention and that upon each and every thereof have distinctly and plainly marked in bold and conspicuous letters the word "Patented," together with the words and figures "June 9, 1903, and December 27, 1904," that prior to the commencement of this suit defendants Riverside Heights Orange Growers' Association and George D. Parker were each notified in writing by complainant of the said reissued letters patent number 12,297 and of complainant's ownership thereof and that the fruit graders or sizers said defendants were making and using were infringements thereof and were requested to respect said letters patent and discontinue the making, use or sale of such infringing machines.

Sixth. That the defendants Riverside Heights Orange Growers' Association and George D. Parker have infringed the said reissued letters patent number 12,297 and particularly the said first and tenth claims thereof and the exclusive rights of complainant thereunder by making, using and selling the so-called "Parker" grader and by making, using and selling graders, built in substantial accordance with letters patent of the United States number 997,468 granted to defendant Parker, without the license or consent of complainant, and have continued so to do since the commencement of this suit and

threaten and intend to continue so to do. [44]

Seventh. That complainant recover of the defendant, and each of them, the profits, gains and advantages which said defendants, and each of them, have or has derived, received or made, by reason of said infringement, and that complainant recover of the said defendants, and each of them, any and all damages which complainant has sustained or shall sustain by reason of said infringement by defendants, or either of them.

Eighth. And it is hereby referred to Lynn Helm, Esq., as the Master of this Court, who is appointed, *pro hac vice,* to take and state the account of said gains, profits and advantages and to assess such damages and to report thereon with all convenient speed, and the said Riverside Heights Orange Growers' Association and George D. Parker, their attorneys, officers, clerks, servants, agents, associates and workmen, are hereby directed and required to attend before said Master from time to time as he may require, and to produce before him such books, papers, vouchers, documents, records or other things and to submit to such oral examination as the Master may require.

Ninth. That a perpetual injunction issue out of and under the seal of this Court, directed to said defendants, Riverside Heights Orange Growers' Association and George D. Parker, their and each of their, officers, attorneys, agents, servants, workmen, clerks and associates enjoining and restraining them and each of them from directly or indirectly making or causing to be made, using or causing to be used, sell-

ing or causing to be sold, in any manner, any machine or device or fruit grader or sizer, containing or embodying or employing the said invention granted by the said reissue letters patent, or particularly as set forth and claimed in claims numbered one (1) and ten (10) thereof, or any device or machine capable of being combined or adapted to be used in infringement of said letters patent or said claims thereof in any manner whatsoever; and from making [45] or causing to be made, using or causing to be used or selling or otherwise disposing of for use any machine made in substantial accordance with letters patent of the United States number 997,468 granted to defendant George D. Parker, and from continuing the manufacture, sale or use in any manner whatsoever of the so-called "Parker" grader or graders.

Tenth. That complainant do have and recover judgment against defendants Riverside Heights Orange Growers' Association and George D. Parker, jointly and severally, for the sum of $1,576.63 costs and disbursements of this suit, and that the further questions of increase of damages be reserved until the coming in of the Master's Report.

Dated Los Angeles, California, Nov. 7th, 1913.

OLIN WELLBORN,
District Judge.

Decree entered and recorded November 7th, 1913.

WM. M. VAN DYKE,
Clerk.
By Chas. N. Williams,
Deputy Clerk.

$382.60, being all of the items on the first page of items and $2.00 on the second page of items in cost bill omitted by mistake on original taxation of costs and now inserted and included in the taxed costs, making the total of costs taxed $1,959.23, Dec. 16, 1913.

WM. M. VAN DYKE,
Clerk.
By Chas. N. Williams,
Deputy Clerk.

[Endorsed]: Cir. Ct. No. 1562. United States District Court, Southern District of California, Southern Division. Fred Stebler, Complainant, vs. Riverside Heights Orange Growers' Association, and George D. Parker, Defendants. In Equity. Interlocutory Decree. Filed Nov. 7, 1913. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. Frederick S. Lyon, 504–7 Merchants Trust Building, Los Angeles, Cal., Solicitor for Complainant. **[46]**

In the United States District Court, Southern District of California, Southern Division.

FRED STEBLER,
Complainant,

vs.

RIVERSIDE HEIGHTS ORANGE GROWERS' ASSOCIATION et al.,
Defendants.

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[Proceedings Had July 29, 1914, 9:30 A. M.]

In the United States District Court, Southern District of California, Southern Division.

FRED STEBLER,

Complainant,

vs.

RIVERSIDE HEIGHTS ORANGE GROWERS' ASSOCIATION et al.,

Defendants.

Proceedings had before Hon. LYNN HELM, Special Master, under the interlocutory decree in the above-entitled suit, commencing at the hour of 9:30 A. M. of Wednesday, July 29, 1914.

Present: FREDERICK S. LYON, Esq., Solicitor for Complainant.

N. A. ACKER, Esq., Solicitor for Defendants.

The following proceedings were had:

[Statement of George D. Parker.]

The defendant George D. Parker presents a statement under oath in response to the order of the Master, which statement is filed.

Henry D. French as president and manager of defendant Riverside Heights Orange Growers' Association presents a statement on behalf of said de-

fendant Riverside Heights Orange Growers' Association, which is filed.

Complainant thereupon takes exception to the statement filed on behalf of said Riverside Heights Orange Growers' Association, as follows:

That it does not appear therefrom that the said statement embraces or covers all of the infringing sizers purchased or used [49] by said defendant Riverside Heights Orange Growers' Association to the date of the Master's order herein, and that said statement is not accurate or exact as to the number of such sizers so purchased or used by said defendant association; that such statement does not in any manner set forth any profits derived by the said defendant association from the use of the infringing sizers or graders referred to in said statement or report, and in this respect it does not comply with the requirements of the interlocutory decree in this case, or the order of the Master herein.

To the statement filed by the defendant Parker, complainant excepts as follows:

1. That said statement does not contain a true statement of the number of graders manufactured or sold by the defendant Parker in infringement of letters patent in suit.

2. That said statement is not prepared in accordance with the order of the Master herein or the equity rules.

3. That it is impossible to ascertain from the said report the period of time covered by said report, and exception to such report is taken as not correctly setting forth either the sale price of the

infringing grader, the contracts therefor as a whole, or the cost of manufacture thereof, as required by the Master's order herein.

4. Exception is taken to the alleged items of overhead expenses as not allowable herein, and on the further ground that it is impossible to ascertain from said statement that the alleged overhead expenses are chargeable either in whole or in part to the manufacture and sale of the infringing graders.

5. The complainant excepts to each and every item and statement in said report of said Parker as incorrect, insufficient and inadequate, and requests an opportunity to examine [50] the defendant Parker and his books and records fully with reference thereto.

Mr. ACKER.—Counsel for the defendant requests that complainant's counsel specify wherein he desires a fuller statement than that which has been filed and specified, and more particularly such additional matter as he desires to be supplied by the defendant Parker in order to enable him to more fully understand and pass on the report as submitted.

To that exception noted as to the statement supplied not being in accordance with the equity rules and the rules of this Court, and to the further exception that the statement does not disclose all of the machines manufactured or sold by the defendant Parker, counsel for defendants asks for a ruling of the Court thereon. A ruling of the Court is also asked relative to the exception taken to the report supplied by the Riverside Heights Orange Growers'

Association as to the inaccuracy of the report in not specifying all the machines supplied to said company by the defendant George D. Parker, and also a ruling of the Court is requested as to the alleged failure of the defendant Riverside Heights Orange Growers' Association to report as to the profits derived from the use of the machines therein reported.

(Thereupon an adjournment is taken until 2 o'clock P. M. of this day at this same place.) [51]

[Proceedings Had July 29, 1914, 2 P. M.]

Office of Hon. LYNN HELM, Los Angeles, Cal.

Wednesday, July 29, 1914, 2 o'clock P. M.

This being the time and place to which the further taking of proofs was continued, proceedings are now resumed.

Present: Hon. LYNN HELM, Special Master.
FREDERICK S. LYON, Esq., Solicitor for Complainant.
N. A. ACKER, Esq., Solicitor for Defendant.

[Testimony of George D. Parker, for Complainant.]

GEORGE D. PARKER, sworn as a witness on behalf of complainant, testified as follows:

Direct Examination.

(By Mr. LYON.)

Q. 1. You are the defendant George D. Parker?

A. Yes.

Q. 2. In the verified report filed by you here today you have listed one sizer or grader as sold to the Benschley Fruit Company for $425, while the contract produced shows the sale of that grader and

(Testimony of George D. Parker.)

also a smaller sized grader. Is it a fact that such small size grader was also sold and installed for said company? A. Yes, sir.

Q. 3. And the price received was the sum of $195?

A. Yes.

Q. 4. You are acquainted with Mr. Gaddas of the Fruit Growers' Company, having a place of business here in Los Angeles?

A. I have met him once or twice.

Q. 5. Through him you sold three of the infringing Parker [52] graders and shipped the same to Porto Rico? A. No, sir.

Q. 6. Did you sell any of said machines for shipment to Porto Rico?

A. I sold some parts and wheels and so forth, but no complete grader.

Q. 7. What parts did you sell?

A. Castings and wheels.

Q. 8. Will your books show a list of the parts so shipped to Porto Rico? A. I believe not.

Q. 9. To whom were those parts, as you now call them, sold? A. Ruhlman.

Q. 10. Please describe in full each and all of such parts as were made and sold and shipped on that order or in connection with that order.

A. There were four drums—speaking of the main parts—four drums and the necessary bearings and stuff, and what we might style sizer units. That is all.

Q. 11. When these parts were assembled they would form how many graders or fruit runways?

(Testimony of George D. Parker.)

A. I don't know.

Q. 12. How many were they ordered for?

A. Two, I think.

Q. 13. Have you any correspondence in your records referring thereto? A. I may have.

Q. 14. I will ask you to search your records and produce at a subsequent hearing any books of account, lists of material or parts, or correspondence, referring to the manufacture and sale or shipment of these parts to Ruhlman in Porto Rico. Did you [53] ever do any business in connection with the shipment or manufacture of parts for graders with a man named Fletcher in Porto Rico?

A. No; not that I know of.

Q. 15. Did you ever have any other contracts for graders or grader parts with any other person, firm, corporation or association in Porto Rico other than this Ruhlman order? If so, state fully with whom and what. A. I don't think so.

Q. 16. Either in 1910 or eleven you set up in the packing-house of the Riverside Heights Orange Growers' Association at Riverside one of these infringing graders, and afterwards shipped it either to Florida or Porta Rico, did you? A. Yes.

Q. 17. To whom did such machine go?

A. I don't remember whether it went to Florida or to Ruhlman.

Q. 18. Will your books of account show where that machine went to? A. I expect they will.

Q. 19. That is not one of the two machines for

(Testimony of George D. Parker.)

which you shipped parts as heretofore testified by you, is it?

A. I am not sure whether that machine went to Florida or to Ruhlman.

Q. 20. (By the MASTER.) Can you answer the question?

A. If it is the one that went to Ruhlman, it is one.

Q. 21. (By Mr. LYON.) What is your recollection in regard thereto?

A. That it is one of them.

Q. 22. And your recollection is that that is the first machine that was shipped to Ruhlman in Porto Rico?

A. I couldn't say whether that was the one that went to Porto Rico or whether that was one that went to Florida.

Q. 23. If it went to Florida to what company did it go?

A. Either Mr. Skinner or Chase & Company. [54]

Q. 24. Did you ship to, or sell to, the Wachalla Citrus Association in Florida one of the infringing Parker graders? A. No.

Q. 25. Do your books of account show fully to whom and when and how many of these graders were from time to time made and sold and shipped?

A. Yes.

Mr. LYON.—We will have to ask that the books be produced, in view of the testimony of the witness.

The MASTER.—Well, you may go on with the next thing.

(Testimony of George D. Parker.)

Q. 26. (By Mr. LYON.) In this same statement or schedule of sales of Parker graders or sizers, I note that you have listed two graders as sold to Chase & Company, and two to L. B. Skinner & Company, but that no amounts or price therefor are carried in the last column or totaled in the total of that column. Why are these not carried in this total? A. I think they are in the total.

Q. 27. The total of $26,670 is the total shown on this page. A. I think so.

Q. 28. Then what is the indorsement on the last page of that schedule "Omitted from gr 2 $1,800, less cash $1,426.08," then a line and "$373.92"?

The MASTER.—Counsel for plaintiff says that the first two items omitted on the first page are not included in the total at the bottom of that page, but are carried over into the next and made separate items on the second page, and are therein added with the total on that page.

Mr. ACKER.—Yes; I don't think the witness knows anything about it.

The MASTER.—And that that was done by counsel? [55]

Q. 29. (By Mr. LYON.) What is the meaning of the entry to which I have just directed your attention on this last page, and, particularly, the item "less cash $1,426.08"?

The MASTER.—What does the item "less cash $1,426.08" mean?

Mr. ACKER.—That is "cost." It may be my poor writing, but it is "cost."

(Testimony of George D. Parker.)

Q. 30. (By Mr. LYON.) From what did you prepare this statement of "material for sizers" forming part of the statement filed by you here to-day, and having particular reference to the amounts in money set forth therein? Please explain to us how that was prepared.

A. That was done from one of the machines, all of them being of the same size.

Q. 31. By estimate?

A. No, sir; actual measurements.

Q. 32. Where did you get the rate of cost of materials used, as a basis for such figures?

A. In mill work it is from the mill that furnished the wood work, at $70 for each sizer.

Q. 33. And what items does that $70 last referred to cover? A. All the woodwork.

Q. 34. And from what did you take the cost of the 180 feet of 7" cotton belt, listed in this list?

A. From the regular lists provided by the wholesalers handling that material.

Q. 35. Is that figure given therein the list price?

A. No, sir.

Q. 36. What discount from the list price does it take into consideration? A. 55 off.

Q. 37. Was that 4-ply cotton belt? [56]

A. Yes.

Q. 38. Have you any of the bills showing what you actually paid on these various machines for such 7" cotton belt?

A. I don't think we have, as far back as that.

Q. 39. From whom did you purchase such cotton

(Testimony of George D. Parker.)

belt? A. Fairbanks-Morse.

Q. 40. Of Los Angeles, California?

A. Yes, sir; partly.

Q. 41. And from whom else?

A. Coffey Belting Company.

Q. 42. Of Los Angeles, California?

A. Yes, sir.

Q. 43. You say that the woodwork on these graders is figured at $70, the price at the mill. By whom did you have all of such woodwork done on all of the infringing Parker graders made and sold and covered by this report to which you have referred here in your testimony to-day?

A. Some from A. W. Miller and some from the Russ Lumber Company.

Q. 44. And some of the work was done in your own shop, was it? A. I think not; no.

Q. 45. Was it all done by contract?

A. Up to the time of that report, I think; yes.

Q. 46. Have you the bills of such companies for such work?

A. Only one that I have been able to find. That is one from the Russ Lumber Company.

Q. 47. Have you that with you? A. Yes.

Q. 48. Produce it.

A. (The witness produces a bill.)

Q. 49. I notice that this Russ Lumber Company statement or bill that you have produced calls for one whole sizer 1110 (I anticipate [57] that means feet) $70. What woodwork did that cover? The bins as well as the sizer parts? A. Yes.

(Testimony of George D. Parker.)

Q. 50. And what other woodwork was covered in this $70 item other than the bins and the grading machine proper? A. None.

Q. 51. I notice that in this statement of material for sizers that you have filed with your statement here, the same is itemized, and there is no such item of $70 including all woodwork. I will ask you now to take such statement and mark thereon in ink after each item with your initials each of the items which goes to make up this $70.

The MASTER.—Can you do that? Can you indicate and mark on there what items go to make up the $70? A. Yes.

The MASTER.—Read them into the record. Read the items that go to make up the $70.

Mr. ACKER.—Take each one of these that go to make up the $70.

Mr. LYON.—You don't want this marked?

The MASTER.—No.

Mr. LYON.—Let him mark this one (a copy), and then let Mr. Benjamin take it and copy it.

The MASTER.—Mark it with a "P."

A. This is wrong. That is the half sizer.

The MASTER.—Just make the check mark on this (the original).

A. (The witness does as requested.) [58]

(The following items are marked by the witness on the original report:)

4	2″ x 4″ x 20′ rest for roll stands.....	4.20
2	2″ x 4″ x 20′ cap for chain rail.....	1.89
72	Lin. ft. ¼″ x ¾″ hardwood guide for chain	1.50

(Testimony of George D. Parker.)

4	1″ x 5–½″ x 20′ belt rest	2.80
4	1″ x 4–½″ x 20′ belt rest	2.10
20	2″ x 4″ x 28″ base for roll stands	2.17
22	2″ x 3″ x 14″ upper rafter posts	.91
11	2″ x 6″ x 24″ upper rafter	1.54
2	2″ x 4″ x 51″ drum posts for extension	.63
1	2″ x 3″ x 16′	.56
1	1″ x 12″ x 16″	1.12
2	2″ x 4″ 48″ drum posts on drive end	.56
2	S–6, 1–3/16″ take-up boxes	4.80
2	1–3/16″ bracket boxes	4.80
20	2″ x 3″ x 37″ outside legs	2.10
20	2″ x 3″ x 34″ inside legs	2.03
20	rafters 2″ x 4″ x 50″	3.85
8	1″ x 1–¾″ x 18″ floor rails	1.68
10	1″ x 3″ x 60″ braces	.84
4	1″ x 3″ x 72″	.42
4	2″ x 6″ x 16′ canvas rail	4.48
4	2″ x 6″ x 20′ canvas rail	5.60
2	2″ x 6″ x 16′ board iron rail	2.24
2	2″ x 6″ x 20′ board iron rail	2.80
2	1″ x 1″ x 16′ rail for board irons)	
2	1″ x 1″ x 20′ rail for board irons)	.72
2	2″ x 4″ x 16′ rest for cull belt	1.47
2	2″ x 4″ x 20′ rest for cull belt	1.90
70	Lineal ft. 1″ x 1–¼ rounded cull b. r'l	1.05
3	1″ x 12″ x 20′ for sides and ends	2.70
	(In pencil)	63.46

(Testimony of George D. Parker.)

	(In pencil)	63.66
2	1″ x 12″ x 16′ for sides and ends	2.24
4	1–¼ x 12″ x 18′ stepping for cull belt	4.68
70	Lin. ft. of resaw 1–¼″ x 8″	2.70
70	Lin. ft. 1″ x 2″ rounded for cull b	.84
8	2″ x 3″ x 18″ cull belt posts	.42
18	1″ x 12″ x 39″ partition boards	4.20
	(In pencil)	78.74

Q. 52. (By Mr. LYON.)—After this woodwork had been completed either by the Miller Company or by the Russ Lumber Company, it was delivered direct to the place of erection of the machine? Is that your practice? A. To the railroad.

Q. 53. And did not enter your shop at Riverside at any time? A. No.

Q. 54. And were all of these graders, both large and small, set forth upon the Schedule A, forming a part of the report filed by you here to-day, and the machines shipped to Porto Rico, to which you have referred, contracted for in this same manner, so far as this woodwork just identified by you is concerned?

A. Yes.

Q. 55. And at this same price?

A. Miller was a little higher.

Q. 56. Was the price the same for the large and the small size, or what you have termed in your report "half graders"?

A. Proportionately as they appear in the charge there; yes.

Q. 57. Well, the two itemized statements marked

(Testimony of George D. Parker.)

"C" and "D" respectively, as part of this report, do not contain these items segregated and totaled in this manner, and, apparently, these schedules were not prepared from such bill. I will now ask you to state definitely what the cost was of all such mill work on the half size graders. If there is any difference in regard to [60] any of them, state what it was.

A. Proportionately the price was the same—

The MASTER.—The question is, what was the cost of the whole work on the small size grader.

A. 7 cents a foot. The figure is the same. 7 cents a foot for the finished material.

The MASTER.—And how many feet were there?

A. For the half sizer there is not quite so much as on the other, but it is figured at the same rate.

Q. 58. (By Mr. LYON.) Take, then, the item 4 2″ x 4″ x 20′ rest for roll stands 4,20″. Would that figure out at 7 cents per foot, or should that item then be $3.78?

The MASTER.—Ask him the first part of the question. Does that figure out at 7 cents a foot—that item. A. Yes.

Q. 59. (By Mr. LYON.) How many feet do you make? A. 60 feet.

Q. 60. And that is supposed to be board measure?

A. Yes, sir.

Q. 61. And would the same be true of the second item, "22″ x 4″ x 20′—" is that item figured at 7 cents a board foot?

A. That is what I attempted to figure it by.

Q. 62. Does it figure that way?

(Testimony of George D. Parker.)

A. I think there is a slight error there.

Q. 63. Of how much? A. Of 7 cents.

Q. 64. How many feet board measure do you figure for such timbers 2 x 4 x 20′?

A. 26 feet. I think it is about correct, after looking it over. There are 26–⅓ feet. I don't know whether this is copied right. [61]

Mr. ACKER.—That is the original that you have.

The MASTER.—That is practically right. There is only a fraction difference.

Q. 65. (By Mr. LYON.) On the second page of this schedule, to wit, that indorsed "Material for Adjustable Bins and Distributing System," appears the item 3 1″ x 12″ x 20′ for sides and ends $2.70. How many feet board measure did you figure in this item?

A. 60 feet.

Q. 66. And at what price did you figure that? 4-½ cents? A. Yes, sir; four and a half.

Q. 67. Why wasn't that figured at 7 cents, as you have said all this was figured at 7 cents?

A. That was stock, probably, which might have been sold for a lower rate.

Q. 68. That is one of the items you have checked in response to my request as to what was covered by this $70 rate?

A. In the item as covered by that bill; yes.

Q. 69. And you state that that bill was all figured at 7 cents? A. Practically figured at 7 cents.

Q. 70. Taking the subsequent item under the one I have called your attention to, 2 1″ x 12″ x 16′ for sides and ends $2.24. That is figured on a basis of 32

(Testimony of George D. Parker.)

feet board measure? A. Yes.

Q. 71. Both of these items to which I have last called your attention should represent respectively 20 feet and 16 feet long, and not inches, shouldn't they? A. I think so; yes.

Q. 72. What was the rate that you bought the 7" 4-ply cotton belt at per foot?

A. 34 cents.

Q. 73. And what discount did you have from that lnst price? [62] A. Fifty-five.

Q. 74. And at that what would 180 feet cost?

The MASTER.—What would 180 feet cost at 34, with 55 per cent off.

A. I am not on that page.

Q. 75. (By Mr. LYON.) You have not anything to do with that page. Answer the question. What would 180 feet at that rate and discount cost?

A. $27.54.

Q. 76. Was the price of the No. 45 chain standard during all the time of the manufacture of these infringing machines?

A. I paid 7 cents a foot for that.

Q. 77. Was that gross or list?

A. That was the net price.

Q. 78. Isn't it a fact that that could be bought in the open market at 6 cents per foot?

A. I think not, but I don't know anything about that.

Q. 79. Have you any of the bills for such chain?

A. I don't know.

Q. 80. From whom did you purchase such chain?

(Testimony of George D. Parker.)

A. Fairbanks-Morse I think, originally.

Q. 81. And from whom else?

A. From the Meese-Gottreich Company.

Q. 82. From whom did you buy the 48" canvas used in these infringing machines?

A. From Hoegee & Company.

Q. 83. And at what price net to you?

A. I don't know about that.

Q. 84. Have you any of the bills or any of the records which would show the prices paid therefor by you?

A. I am not sure as to that. Mr. Marks, my bookkeeper, has a [63] file where he keeps the price. He gave me the price.

Q. 85. Is the same true with regard to the 36" canvass used in these machines? A. Yes, sir.

Q. 86. Another item of this statement is 140 ft. 3" cotton belt. That was 3-ply belt?

A. Sometimes three and sometimes four.

Q. 87. Was there a difference in price between the two? A. Yes.

Q. 88. What were the respective prices, and were they uniform at all times during the manufacture of said infringing machines?

A. Practically uniform.

Q. 89. What were the respective prices for such respective 3-ply and 4-ply 3" cotton belt?

A. 3-ply 12 cents a foot, and 4-ply 16, with 55 off.

Q. 90. From whom did you buy that belting?

A. Fairbanks-Morse, principally.

Q. 91. And from whom else?

(Testimony of George D. Parker.)

A. I don't know anything about anyone else.

Q. 92. You operate and did operate during the manufacture of these infringing machines your own foundry, did you? A. Yes, sir.

Q. 93. And the price of the various metal castings enumerated in this schedule are figured upon the price that you made those castings for others. Is that correct?

A. We have charged the price of 4½ cents.

Q. 94. And you made those for customers at the same price?

A. Small pieces like that we sometimes charged more. Large, heavy castings, of course, bring a less rate.

Q. 95. You have now attempted in this schedule to list the actual cost of such castings to you? [64]

A. We have used the price of 4½ cents per pound for the entire castings going into the machine.

Q. 96. That price would include the machine work on these castings that are listed here? A. No, sir.

Q. 97. By whom was such machine work done?

A. Any particular man, have you reference to?

Q. 98. In your shop. A. In my shop.

Q. 99. And at what rate was such machine work charged in this schedule? A. 65 cents.

Q. 100. What rate per day do you pay the man who did that work? A. From 35 to 42 cents.

Q. 101. Then the balance of the charge of 65 cents for such machine work covered what?

A. That 65 cents is not far from the actual cost,

(Testimony of George D. Parker.)

when you figure the work that sometimes has to be done over again.

Q. 102. Is that the commercial rate for which you do such machine work for others? A. 75.

Q. 103. And this additional charge per hour, then, was made against this work to cover additional expense of the shop, shop equipment, etc., was it? To figure the total actual overhead expense of production? A. No.

Q. 104. Please explain why you charge in this schedule a greater amount for such machine work than you actually pay for having such machine work done in wages. Is that an estimate on the value of the use of the machines, or what?

A. I hadn't thought much of that.

Q. 105. Please make an answer to the question as to why that [65] was so charged in this schedule.

A. I just made up the price on that.

Q. 106. Referring now to items 2 sprockets, $5.60, what were the sizes and weights of such sprockets?

A. I have used the price that I would have to pay the wholesale houses for those parts.

Q. 107. Did you buy those parts at the wholesale house, or did you make them yourself?

A. I made most of them.

Q. 108. Then you did not actually pay anyone $5.60 for the two sprockets for each of these infringing machines, but in your statement you estimated the cost at that price?

A. We purchased some sprockets, but not all.

Q. 109. Do any of your books show the price of

(Testimony of George D. Parker.)

such sprockets that you purchased? [66]

A. No, sir.

Q. 110. What is your best recollection as to the number that you purchased? A. I have no idea.

Q. 111. How many of them did you cast at your own foundry? A. I have no idea.

Q. 112. How much did such sprockets weigh?

A. I don't know.

Q. 113. Is there any way that you can supply that information to us? A. I might guess at it.

Q. 114. Have you some of the same sprockets at your shop now? A. Yes.

Q. 115. Can they be weighed up? A. Yes.

Q. 116. I will ask you to do so and at the next meeting, or the first meeting in Riverside, you may give us that information. Also state what machine work, if any, is required thereon, and give us the same information in regard to the two drums which are listed here as "2 drums, drilled, $13.60," and the same information in regard to 2 S–6, 1–3/16" take-up boxes $4.80 and "2 1–3/16" bracket boxes $4.80," and the rate of wages paid each of the men who have worked on the items to which I have directed your attention, and in this connection you will, in reporting the rate of such wage, report the actual rate paid to the men who actually did this work.

Q. 117. In this statement is the item "22 roll stands with fruit guides $50." To what do those refer?

A. The sizer units and all the arms and castings going toward making a complete unit.

(Testimony of George D. Parker.)

Q. 118. What we term in this litigation a grader unit? A. Yes, sir. **[67]**

Q. 119. Were those manufactured entirely in your shop?

A. Yes; excepting the screws and bolts and things used.

Q. 120. I will ask you to give us an itemized statement of the time of the workmen employed upon the manufacture of these roll stands or grade units, and an itemized statement of the material put thereinto, and the cost of such material, and the actual cost of labor as actually paid by you in the manufacture of the actual roll stands and fruit guides as they went into these machines, and have this ready for us also at either the next hearing or the first hearing in Riverside. From September 30, 1909, to March 10, 1913, what other mechanical devices were you engaged in manufacturing and selling, other than the infringing graders? A. Box nailing machines.

Q. 121. What else? Narrate them all.

A. Weighers, washing-machines, and a general class of packing-house machinery.

Q. 122. Enumerate what things are in the general class.

A. Packing-house equipment is composed principally of weighers, sorting tables, elevators, washers and dryers, and brushers.

Q. 123. And were you also engaged in conducting a general machine shop and foundry business in the city of Riverside? A. Yes.

(Testimony of George D. Parker.)

Q. 124. For the general convenience of the public?

A. Yes.

Q. 125. Will your books show the gross business done by you from September 30, 1909, to March 10, 1913, the period covered by this statement "F"?

A. Yes.

Q. 126. Will it show the volume of each of these separate articles and devices manufactured by you?

A. I hardly think so; not segregated. **[68]**

Q. 127. Will they show on the books?

A. They will show in the shape of a total, which the bookkeeper might pick out. It would take quite a little time.

Q. 128. In the item of office expense, $6,089.03, what have you included, and how do you make up such item? First, however, answer this question: By whom was such item made?

A. I have had several bookkeepers, and it is only from the items they charged up as office expense.

Q. 129. You mean this is taken from a ledger account? A. Yes, sir.

Q. 130. By whom was it computed for this particular report? A. Mr. Marks.

Q. 131. You have no personal knowledge of this other than that he was directed to make an account?

A. No. I looked at the books myself, if that is what you mean.

Q. 132. Is that true of the other items of this schedule, statement "F"? A. Yes.

Mr. LYON.—We move, in view of the testimony

(Testimony of George D. Parker.)

of the witness, to strike this entirely from the record and exclude it from consideration, on the ground that it is incompetent and not the best evidence and not within the personal knowledge of the witness.

The MASTER.—The motion is denied. It will not be stricken out, but you can supplement it in any way you want to. I understand it is a statement made by these officials. There is no reason for striking it out. You can take exception to it or you can examine him further in reference to it. They may have other witnesses to support it. **[69]**

Mr. LYON.—In view of the testimony of the witness as to the lack of personal knowledge, I believe that is as far as I can go with the examination of this witness in these regards at this time.

The MASTER.—Do you want to cross-examine him now or after these other items are furnished?

Mr. ACKER.—I will cross-examine at the conclusion of his direct examination.

(By consent of counsel an adjournment is now taken until Thursday, August 6, 1914, at this same place, at the hour of 10:30 A. M.) **[70]**

[Proceedings Had August 6, 1914, 10:30 A. M.]

Office of Hon. LYNN HELM,
Title Insurance Building.
Los Angeles, Cal.
Thursday, August 6, 1914, 10:30 A. M.

This being the time and place to which the further

(Testimony of George D. Parker.)

taking of proof in this matter was continued, proceedings are now resumed.

Present: Hon. LYNN HELM, Special Master.
FREDERICK S. LYON, Esq., Solicitor for Complainant.
N. A. ACKER, Esq., Solicitor for Defendant.

Mr. ACKER.—The defendant on revising the statement as to the cost of each whole sizer, including adjustable bins, distributing system and installation, made an overcharge of $11.28, which makes an overcharge on the 72 sizers of $812.16, which would give as the proper cost of the 72 whole sizers and adjustable bins, distributing system and installation, $24,857.28 instead of $25,669.44 as originally reported, and making the profit on the whole sizers including adjustable bins, distributing system and installation, $3,917.72 instead of $3,105.56, as set forth in the statement on file.

On the half sizers, including adjustable bins, distributing system and installation, an overcharge of $9.48 was made in the statement as originally rendered, making an excess charge as to the cost of $123.24 on the 13 half sizers including adjustable bins, distributing system and installation, and making the total cost of $2,842.06, instead of $2,965.30 as contained in the report on file, and giving a profit for the half sizer, including adjustable bins, distributing system and installation of $962.94 instead of $739.70, as contained in the report on file, and making [71] a total profit on the 72 whole sizers

(Testimony of George D. Parker.)

and the 13 half sizers, including adjustable bins, distributing system and installation, of $4,880.66 instead of $3,845.26 as contained in the report on file herein.

Mr. LYON.—The difference in cost just stipulated by counsel for defendant is in the cost of what items, generally speaking?

Mr. ACKER.—The mistake made in the original report related to the cost given of the drums, the two S–5 and 6 bracket boxes, the sprockets and two S–7 and 8 bracket boxes, and in the cost as reported of the sizer stands, which items appear on the itemized statement now filed.

To the total profit of $4,219.18 appearing on the statement marked schedule A. should be added the overcharges of $980.76, making $5,199.94, to which should be added the sum of $45.12, making $5,245.06. The $44.96 is the overcharge on the four machines to Chase & Company and L. B. Skinner & Company.

Mr. LYON.—We accept the statement of counsel as a stipulation in so far as all of the items referred to by him are concerned, reserving, however, our exception to the overhead expense charge and to certain of the other items of cost to which we have directed the testimony of the witness, until such time as we have had an opportunity to examine the books at Riverside.

GEORGE D. PARKER, Recalled.

Direct Examination (Resumed).

(By Mr. LYON.)

Q. 133. Referring to the item in your account of

(Testimony of George D. Parker.)

140 feet of 3″ cotton belting, the list price which you paid for 4-ply was 16¢ per foot and for 3-ply 3″ cotton belt 12¢, both of these [72] list prices being subject to a discount of 55% allowed you. Is that correct? A. Yes.

Q. 134. And if you used 140 feet of this 3″ cotton belt, if such was 4-ply, the cost should be shown as $10.08? A. Yes.

Q. 135. And if you used 3-ply it should be shown as $7.56? A. Yes.

Q. 136. Is there any way in which you can determine on how many of these 72 full sized graders, or 13 small sized or half graders, you used 3-ply 3″ cotton belt, or 4-ply 3″ cotton beltings? A. No.

Q. 137. When did you commence using the 4-ply cotton belting?

A. We used 4-ply at first almost entirely.

Q. 138. When did you commence using the 3-ply?

A. I don't know.

Q. 139. From whom did you buy this belting?

A. Fairbanks-Morse.

Q. 140. In your statement you have shown that 23 yards of 48″ canvas was used. What ply canvas did you use in such machines? Three or four-ply?

A. I think that is No. 4—style No. 4.

Q. 141. Have you any receipted bill or invoice for such canvas that went into these machines?

A. (The witness produces a bill.)

Q. 142. Did you use this same No. 4 duck, 48″ in width, all the time, or did you use a cheaper and lighter grade part of the time in these machines?

(Testimony of George D. Parker.)

A. We used heavier on the bottom and lighter on the sides.

Q. 143. And this 23 yards in the item to which I have referred covers the bottoms and sides both, does it? [73]

A. I think there are two items there.

Q. 144. The following item of the statement is 8-yards of 36″ canvas. Is that what you refer to as the sides? A. I expect so.

Q. 145. In all of the so-called Parker sizers covered by your report, as so far filed, did you use this No. 45 chain, or did you discontinue the use of that?

A. We discontinued that.

Q. 146. In how many of such sizers did you not use such chain?

A. I substituted a rope in place of it.

Q. 147. And what was the comparative cost of the rope? A. The rope was higher than the chain.

Q. 148. Have you now with you a bill, or can you produce the bills for such rope?

A. No. 55¢ a pound is what it cost. There were 8 feet to the pound. It may be only 50 cents. It was 50 or 55.

Q. 149. From who did you purchase such rope?

A. Fairbanks–Morse.

Q. 150. Is the price of such rope at 55 cents per pound, or 50 cents per pound, net, or is there a discount as purchased by you?

A. That is the net price.

Q. 151. Which was it, 55 or 50 cents a pound?

A. 55.

(Testimony of George D. Parker.)

Q. 152. I notice in this statement that you have an item of freight and expense of drawage $10 per machine. How do you make up that item in that account?

A. By taking the average distance of all the machines sold.

Q. 153. Is that made up by taking the total of all the freight and drayage for the 72 machines and dividing it by the number of such machines, or is it an estimate? [74]

A. It is taken on the mileage basis. It practically amounts to one-half a cent per 100 pounds per mile.

Q. 154. You do not pretend that you actually paid on each one of these specific machines the sum of $10 freight and drayage, but that it is an average charge as made in this statement? Is that correct?

A. Yes.

Q. 155. (By Mr. ACKER.) I understand that you added up the total mileage of all the machines and divided it by the total number.

A. Yes; because we have no other way of checking up each item of expense or freight..

Q. 156. (By Mr. LYON.) And what did you charge in this item of drayage expense?

A. That would be drayage on both ends.

Q. 157. Have you the statement of such averages from which this item was figured? A. No.

Mr. LYON.—I think I will ask that that be produced.

Q. 158. Then there is this further statement here:

(Testimony of George D. Parker.)

Traveling expenses $7.90, as the final item, and also in the statement of cost of material, etc., of sizers, there is a similar duplicate item of $7.90 traveling expenses. Why do you make such charge in such amount as against both of these statements, and how is that figured?

A. It would be almost impossible to make a total amount for each sizer that went to the different places, and we have arrived at that as being an average distance involving that amount of expense.

Mr. LYON.—I will ask that Mr. Parker produce his books with relation both to the freight and drayage expense, and these [75] traveling expenses, and we object to both of the items until there is some other proof than the mere general average and arbitrary statement. We give notice that they are not proven, and I shall ask the Master to disregard such items totally in these statements.

Q. 159. Will your books of account show the amount of labor, either in days or hours, expended upon any or all of these individual sizers and installations correctly? A. Not on all.

Q. 160. Then how have you arrived at the estimate of five days' labor erecting the full-sized sizers and sixteen days' labor erecting the bins and distributing portions of these sizers?

A. That is the proportion of the labor that was turned in by the men as correct.

Q. 161. Turned in by them when?

A. From time to time.

Q. 162. Did it vary on different installations?

(Testimony of George D. Parker.)

A. Oh, yes.

Q. 163. Who figured that estimate in this statement of yours? A. Mr. Marks.

Q. 164. You didn't figure it yourself?

A. Yes; I figured it myself. I checked it over with him.

Q. 165. You did not keep any accurate account, then, of the time of your workmen on these various installations in the building of these various sizers?

A. Some of them we have the right time, and some we have not.

Q. 166. I will ask you to produce your books in this regard at Riverside. In all cases where you sold these infringing sizers they were equipped with bins, were they? A. No.

Q. 167. In what cases were they not equipped with bins? [76]

A. Ruhlman got two that were not equipped with bins.

Q. 168. Were they the only ones that you remember of?

A. I am of the opinion that one or two went to Florida in the same way.

Q. 169. You are unable to identify those, however, are you? A. No.

Q. 170. The two that went to Ruhlman that you speak of are the graders that went to Porto Rico?

A. Yes.

Q. 171. At what price did you sell the graders that went to Porto Rico? A. $210.

(Testimony of George D. Parker.)

Q. 172. And those simply were the grader parts proper? A. Yes.

Q. 173. Covered by the statement B, I think it is. And have you been able from your books since the last adjournment to state whether there were two or three of such graders shipped to Porto Rico?

A. There were four.

Q. 174. Were they all complete, or were they two complete and two without the bins?

A. One was a 34-foot sizer with bins and everything complete, and one was a 54-foot sizer with bins and everything complete.

Q. 175. And the other two were simply the parts of the sizer proper?

A. Simply the parts of the sizers.

Q. 176. What was the price of the 54-foot sizer?

A. $354, I think.

Q. 177. Since the last adjournment have you ascertained that there were other sizers shipped to either Florida, Porto Rico, or out of the United States, by you, other than what have now been accounted for? [77]

A. The four to Ruhlman were the only ones that went out of the United States that I know of.

Q. 178. Your testimony on the 29th was to the effect that you sent the parts for the two sizers to Porto Rico for Ruhlman. Are those the parts of two graders to which you have just been referring?

A. Yes.

Mr. LYON.—In connection with the stipulation of

counsel, and to show that the corrections in cost referred to by him refer to parts, I offer in evidence the statement furnished by counsel and ask that it be marked Complainant's Exhibit Correction Sheet Items "I." (So marked.)

Mr. ACKER.—The exhibit refers to the statement of items referred to in the original report filed?

Mr. LYON.—Yes.

Q. 179. What items have you charged as office expenses?

Mr. ACKER.—I understood you to say that you are calling for the books on that. Why should we take testimony on that proposition?

Mr. LYON.—That is right. That is all of the examination of Mr. Parker at the present time.

(An adjournment is now taken until 2 o'clock P. M. of this day at this same place. **[78]**

[Proceedings Had August 6, 1914, 2 P. M.]

Office of Hon. LYNN HELM,
Title Insurance Building.
Los Angeles, Cal.
August 6, 1914, 2 P. M.

This being the time and place to which the further taking of proof in this matter was continued, proceedings are now resumed.

Present. Hon LYNN HELM, Special Master.
FREDERICK S. LYON, Esq., Solicitor for Complainant.
N. A. ACKER, Esq., Solicitor for Defendant.

GEORGE D. PARKER, recalled.

Direct Examination (Resumed).

(By Mr. LYON.)

Q. 180. You were directed, Mr. Parker, on July 29, 1914, to present here a statement of the number of the new style of graders manufactured and sold by you since the date covered by your sworn statement, here, and you have just presented to me a paper entitled "Schedule of Sales of California Improved Sizers, Including the Adjustable Bins, Distributing System and Cost of Installation." I ask you to state whether or not the names of the parties or associations herein set forth, the number of sizers and half sizers, so-called, and the amount therein set forth as the sale price, are correct and cover all of such installations so made by you of this type of grader, from 1909 to the present time? A. Yes.

Q. 181. Does this statement or sheet to which I have last directed your attention cover the entire United States, or only the State of California?

A. It covers all that I had anything to do with.

Q. 182. Then you are not now, and have not been since the entry [79] of the interlocutory decree, interested in the manufacture and sale of the devices referred to in this statement in the State of Florida?

A. No.

Q. 183. In no manner whatever?

A. I am furnishing them some goods down there—some brushes and things.

Q. 184. Did you furnish any grader parts to those people there? A. No.

(Testimony of George D. Parker.)

Q. 185. Who was it that put in the machine or machines like those covered by this statement in the State of Florida during the summer of 1913 or spring of 1914?

Mr. ACKER.—I object to that. The witness says he has nothing to do with any—

The MASTER.—The question is if he knows.

A. My brother is down there. I don't think he put in any of that type.

Q. 186. (By Mr. LYON). You had no connection whatever with the graders put in in Florida during the years 1913 or 1914? A. No.

Q. 187. Either as a stockholder in the company or as a partner in the business, or as receiving a part of the profits in the business?

A. Well, I do get a part of the profits.

Q. 188. Please state what that arrangement is through which you receive part of the profits in the manufacture and sale of such graders in Florida. Is the contract in writing? A. No.

Q. 189. Then please state the substance.

A. They are making brushers and dryers and numerous other things that go toward fitting up a packing-house, but I know they have not put in any sizers that are like these. [80]

Q. 190. When you say they are not like these, they differ in the manner in which several rollers or pieces of roller are mounted, is that correct?

A. I think not. No.

Q. 191. Please state what your connection with that business is.

(Testimony of George D. Parker.)

A. I guess you might call it a partnership.

Q. 192. Who are the partners? A. My brother.

Q. 193. And yourself? A. Yes, sir.

Q. 194. And what is the name of such partnership?

A. The Parker Machine Works. My brother has charge of it.

Q. 195. Where is it located? A. Tampa.

Q. 196. Are you and your brother equal partners therein? A. Yes.

Q. 197. Have you any personal knowledge as to the kind of graders manufactured by such partnership during 1913 and 1914?

A. Just as they describe what they have done, by letter.

Q. 198. Have you been in Florida during that time? A. No, sir.

Q. 199. (By the MASTER.) Have you got the letters? A. I couldn't say.

Q. 200. If you have they are out at Riverside?

Mr. LYON.—We will pass that till we get to Riverside. We offer the schedule last referred to and produced by the witness in evidence, and ask that it be marked "Complainant's Exhibit No. 2."

(The said exhibit is marked as requested.) **[81]**

Q. 201. (By Mr. LYON.) You have also produced another document entitled "Schedule of Sales of New Rolls for Parker Sizers." Does this statement cover all of the sales of such rolls for such Parker Infringing sizers other than what have been accounted for in your original statement?

A. Yes.

(Testimony of George D. Parker.)

Q. 202. Is the sale price therein set forth correctly set forth? A. Yes.

Mr. LYON.—We offer the schedule last produced by the witness as Complainant's Exhibit No. 3.

(Said exhibit is marked as requested.)

Q. 203. These sets of rolls referred to in Complainant's Exhibit No. 3 were furnished by you to the companies therein named for what purpose, Mr. Parker?

A. To take the place of the sizer units that was on the old machine.

Q. 204. I notice in this exhibit No. 3 you state that you have sold to the Anaheim Orange Growers' Association two whole sets new rolls and one half set of such new roll. For what did you furnish such half set?

A. At their request. They built a half sizer themselves and they wanted the rolls.

Q. 205. And you furnished the rolls to complete such sizer?

A. I guess so. That is what I suppose they done with them.

Q. 206. Did you furnish any other material or parts for such half sizer other than the half set of rolls referred to in Complainant's Exhibit 3? [82]

A. I furnished them some pulleys or drums.

Q. 207. Anything else? A. And belting.

Q. 208. Do your books show an account of this?

A. Yes.

Q. 209. I will ask you to produce that at Riverside to-morrow. You have also produced 12 typewritten

(Testimony of George D. Parker.)

sheets of account of material for sizers, labor and expense of installation, cost of material, labor and expense of installing adjustable bins and distributors for one sizer, cost of material, labor and expense of installing one half sizer, cost of material, labor and expense of installing adjustable bins and distrubutor for one half sizer, a sheet of tabulation and a sheet entitled "Overhead Expenses," which I will ask to be marked Complainant's Exhibit 4, and ask you to state to what these refer.

A. They refer to the type of sizer which we are now building, which in no way is in infringement of the original patent of Mr. Stebler.

Mr. LYON.—With the consent of the Master, after examining this, we will ask leave to question Mr. Parker further in regard to this particular statement.

[Testimony of Fred Stebler, for Complainant.]

FRED STEBLER, produced as a witness on behalf of complainant, and being first duly sworn, according to law, testified as follows:

(By Mr. LYON.)

Q. 1. You are the complainant in this suit?

A. Yes.

Q. 2. How long have you been engaged in the manufacture and sale of fruit graders, in accordance with the patent in suit? [83]

A. For about ten years.

Q. 3. In a general way, since 1908, please state what your equipment has been.

(Testimony of Fred Stebler.)

A. You mean our shop equipment for manufacturing?

Q. 4. Yes.

A. We have had a complete foundry, a complete machine-shop and a complete wood-shop, containing all the necessary tools, machines and devices with which to handle our business.

Q. 5. What besides these graders have you during the period of time from 1908 to the present date manufactured and sold from said shop?

A. We manufactured various kinds of devices; dry cleaning machines to clean oranges, washers, clamp trucks, elevators, and, in fact, everything that enters into a packing-house.

Q. 6. You have examined the statement filed on behalf of the defendant Parker herein?

A. Yes, sir.

Q. 7. During the time covered by such statement, state whether or not any of the orders for sizers therein set forth were solicited by you, and, if so, the circumstances thereof.

A. The greater part, if not all, of those orders were solicited by me. I do not remember of any instance in which they were not solicited in some manner, either by letter or personal interview.

Q. 8. What are the facts in regard to any of said concerns asking for bids upon such installations from you?

A. The facts are that I guess in most instances I was allowed to make an estimate or put in a bid for them. In some instances I was not.

(Testimony of Fred Stebler.)

Q. 9. During the time covered by and at the times covered by said contracts and statement, what was the condition of your [84] factory as to equipment, etc., to handle or have built the sizers, and install the same, covered by such statement and contract of the defendant George D. Parker?

A. Our equipment was entirely adequate.

Q. 10. And were you prepared to have completed said machines and installed the same?

A. Yes, sir.

Q. 11. That applies to the complete machines and complete installations? A. Yes, sir.

Q. 12. What additional expense would it have made to your business?

A. None other than the proportionate amount of labor for the actual handling of the machines.

Q. 13. If I understand your last answer, it would have added nothing to the overhead expense of your business. A. None whatever.

Q. 14. Can you produce a statement of, or state what, during the time covered by the infringement of the patent herein by the defendant George D. Parker, has been the cost to you of manufacturing and installing a complete grader such as you have sold under the patent in suit, and which, as you say, was directly competed with by Mr. Parker in securing most, if not all, of the orders for sizers covered by the statement herein filed by him?

A. I have here an itemized cost account showing the list of all the parts entering into these machines, and the cost thereof, which shows a total cost to me

(Testimony of Fred Stebler.)

of installing those machines of $236.05.

Q. 15. I notice in the statement that you have just produced an item "Overhead Expense 2% on selling price of $250," on the list entitled "List of parts for belt distributing system not [85] including grader," and an item of overhead expense of 2% on the selling price of $175 on the other sheet. How do you figure that 2% overhead expense?

A. Well, I had the bookkeeper take the total expense account from our books as closed for the past year previous to this, and took the actual overhead expense shown therein, which includes insurance, taxes, light and power, and office stationery, and his own labor account, and I think the advertising, and I think some traveling expense. That is all I recall.

Q. 16. (By the MASTER.) And then what?

A. Then that amount totaled up averaged about 2% on our actual gross business on everything.

Q. 17. (By Mr. LYON.) In other words, 2% of your gross business of all kinds handled by your business in the shop?

A. Yes. I think it includes also our depreciation.

Mr. LYON.—For the Master's convenience I might state that it is complainant's contention that while these two statements call for this 2% overhead expense, that in this accounting, in view of the witness, no overhead expense is chargeable in computing the damage or loss of complainant by reason of the infringement, as it is shown that the business was carried on to the same extent as though such graders were actually manufactured and sold. In other

(Testimony of Fred Stebler.)

words, the complainant is paid for his overhead expense and it should not be taken out twice.

Q. 18. (By Mr. LYON.) What other expense, Mr. Stebler, to your shop other than these materials and the actual labor and the other items, other than the overhead expense of 2% to which I have directed your attention as included in these two sheets of the statement, would there have been to your shop if you had manufactured and sold the 70 or 80 machines covered by the defendant's accounting herein? [86]

A. Nothing more than the 2% already shown.

Mr. LYON.—We ask that the two sheets produced by the witness be filed in evidence as "Complainant's Exhibit No. 5, Complainant's Cost."

(The said document is marked Complainant's Exhibit 5.)

Mr. ACKER.—To the introduction of which we object on the ground that they do not correctly represent the cost price of the machines to which they relate so far as they refer to the overhead expenses, and so far as they refer to the expense of installation. The other features of the statement I will stipulate are correct.

The MASTER.—The objection is overruled. You can cross-examine when your turn comes on that matter.

Mr. LYON.—That is all at the present time. The witness will be recalled in regard to these other machines. But that is all in regard to this question of his cost price.

The MASTER.—You say he will be recalled as to

(Testimony of Fred Stebler.)

the other machines?

Mr. ACKER.—I would like to have the witness' examination completed, so when I cross-examine I can cross-examine him as to all he testifies to.

Mr. LYON.—The reservation was as to the other type of machines. I can go ahead and examine him on that, but I understood the Master to say that he preferred to hear it after he saw the machine.

Mr. ACKER.—Do I understand that you have completed the examination of Mr. Stebler so far as relating to all the machines held to be an infringement?

Mr. LYON.—No. I mean to say that I have completed the examination of this witness as to showing what his damage is, based upon the cost of manufacture and sale price, with one [87] exception, and I want to ask one further question.

Q. 19. (By Mr. LYON.) Had you during the time of this infringement from 1908 to the present time, any established price for such graders? If so, state what it was.

A. Yes; we had an established price of $425.

Q. 20. And was that same price of what is called here the large size or double grader and the half size or single grader?

A. That was the price of the double grader.

Q. 21. And the price of the small size or half or single grader was what? A. $225.

Q. 22. Was that price uniform at the time that this infringement started, and during all the time of the infringement? A. Yes.

(Testimony of Fred Stebler.)

The MASTER.—Now, Mr. Lyon, I understand that when you recall Mr. Stebler you desire to recall him as to the infringements subsequent to the decree, and not as to damags.

Mr. LYON.—That is it. But it may be in reference to damages so far as those subsequent to the decree of infringement, but not in regard to the machines accounted for in Parker's first statement.

The MASTER.—You may cross-examine.

Cross-examination.

(By Mr. ACKER.)

Q. 23. I notice in the statement supplied by you given as one item "Overhead Expense 2% on selling price of $175." Please state what the selling price $175 refers to.

A. That refers to the parts of the machine as shown in that sheet.

Q. 24. That is, you mean, it refers to the grader?

A. The upper part, yes; the grader. [88]

Q. 25. Please state in what houses, if any at all, you have installed the grader referred to on sheet one of the statement introduced in evidence as exhibit 5.

A. Do you wish them all?

The MASTER.—Go ahead.

A. I can't give them all from memory; I can give a few of them. There is the Sierra Vista Packing Company, of Riverside; there is the Santiago Orange Growers' Association, at Orange; there is the Placentia Orange Growers' Association at Fullerton and Placentia; there is the Pomona Fruit Growers' Exchange and the Indian Hill Citrus Association at

(Testimony of Fred Stebler.)

North Pomona; there is the Claremont Citrus Association, the Covina Citrus Association; Covina Orange Growers' Association, and the Charter Oak Citrus Association, and the La Verne Orange Growers' Association; there is the Upland Citrus Association, the Upland Heights Orange Association; the Citrus Fruit Association of Ontario; the West Ontario Citrus Association; the Glendora Citrus Association; Glendora Heights Orange and Lemon Association; Fernando Fruit Growers' Association; Duarte and Monrovia Fruit Exchange; the Pasadena Orange Growers' Association; the Whittier Citrus Association.

Q. 26. (By Mr. ACKER.) That is sufficient. Do I understand that at each of the packing-houses you refer to the grader was installed without the distributing system and the adjustable bins?

A. No, sir. Your question didn't ask that.

Q. 27. Were all the graders that you have referred to as having been installed in said packing-house of the same size as the grader referred to on sheet one of exhibit 5?

A. Yes; with the exception of those that were installed previous to the getting out of the belt distributing system.

Q. 28. That is, all 23-foot graders?

A. Yes, sir; with that exception. [89]

Q. 29. And on what did you base the selling price of $175, for the grader?

A. That was our selling price on the grader before the demand for the belt distributing system.

(Testimony of Fred Stebler.)

Q. 30. Referring to the advent of the distributing system, I understand you placed the grader on the market for the sum of $175? A. Yes, sir.

Q. 31. Did that price of $175 include the adjustable bins? A. No, sir.

Q. 32. Did it include any of the matter referred to on the second sheet of exhibit 5? A. No, sir.

Q. 33. The distributing system is covered by a separate patent from the patent in suit?

Mr. LYON.—Objected to as irrelevant, immaterial and incompetent, and not the best evidence, and not involved in this case.

The MASTER.—Overruled.

Mr. LYON.—Note an exception.

A. Yes, sir.

Q. 34. (By Mr. ACKER.) Will your books disclose the exact cost of the installation referred to in the packing-houses which you specified in answer to a previous question, so far as the labor and workmanship is concerned in installing the grader referred to in your statement, and in which you gave the selling price of $175? A. No, sir.

Q. 35. How did you arrive at the cost or expense incident to erecting the said grader in the packing-houses?

A. By keeping in personal contact with the men putting machines up.

Q. 36. Did you yourself keep a personal account of the men engaged [90] in installing of each of the graders referred to on sheet one of exhibit 5, and which you have testified were installed in those vari-

(Testimony of Fred Stebler.)

ous packing-houses?

A. I kept no record; I simply kept my eyes on the men doing the work.

Q. 37. How did you arrive at the expenss of two men, one day, at $5, $10, as the expense of erecting?

A. Simply because I required those men to do that.

Q. 38. That held good in every installation?

A. Not every installation.

Q. 39. Were more men employed in one installation than in others? A. Sometimes.

Q. 40. How many at any one time were required for an installation?

A. The proposition is this: If we had one machine to put up somewhere, as we very often did, we would send two men, and the rule is—not the rule, but the result is—I watched it—usually the result is that those two men put up the machine in one day. Of course, in other places where we might have anywhere from one to four or five machines to put up and other work in addition it would be pretty hard to keep an accurate account of it. But in a great many cases we have put up one machine and nothing else and that is what we got.

Q. 41. In every case where only one machine was involved, the same was installed and erected in the packing-house by two men in one day?

A. Approximately, so far as I can recall.

Q. 42. Is this item of $10 simply based on memory?

A. It is based on memory to that extent; yes. And on experience and personal contact. [91]

Q. 43. Have you an account of any one house?

(Testimony of Fred Stebler.)

A. No, sir.

Q. 44. You kept no record of it—

A. We kept no detailed cost account.

Q. 45. How did you arrive at the cost account of the schedule introduced in evidence?

A. Simply by putting the items and material through the shop and following it.

Q. 46. That is, for the purpose of making this statement? A. Yes, sir.

Q. 47. You have no knowledge of the actual cost of installing other than as you just testified to, by making this statement over at your shop for the purposes of this examination? A. No, sir.

Q. 48. How many graders did you install for the Riverside Heights Fruit Company?

A. I have forgotten; probably five, as near as I can recall.

Q. 49. Do you know what the price of those graders was?

Mr. LYON.—Objected to as immaterial until the date is shown, or the type of grader. The question of our established price is one of established price during the term of the infringement, and not some period prior or subsequent thereto.

Q. 50. (By. Mr. ACKER.) Please examine the bill which I hand you, and state what that relates to.

Mr. LYON.—I make the same objection. It appears from the document that it was years prior to the date of the infringement.

The MASTER.—I think that is a good objection. I don't think it is necessary to go into this thing ex-

(Testimony of Fred Stebler.)

cept during the time of the infringement.

Mr. ACKER.—I simply want to show the established selling price. [92]

Mr. LYON.—We have a right to raise our price and lower it as much as we want to.

The MASTER.—You may offer it subject to the objection. The objection is sustained.

(Marked Defendant's Exhibit 1.)

Q. 51. What was the form of grader installed by you for the College Heights Orange Association of Claremont, California?

A. As I recall it it was the short sizer with the belt distributing system.

Q. 52. Did that installation involve the grader which you have referred to in your sheet I, of exhibit 5, as selling for the price of $175? A. Yes, sir.

Q. 53. How long have you maintained the price of $175 for the grader referred to in sheet I, of exhibit 5?

A. Well, since prior to this infringement.

Q. 54. Was that the selling price prior to the infringement? A. Yes.

Q. 55. As I understand you, $175 was your established selling price for the grader referred to in sheet I, of exhibit 5.

Mr. LYON.—Objected to as calling for a conclusion. If it is to be inferred from that that the selling price was for that—

Mr. ACKER.—I understood the witness to testify that he had sold the grader referred to in sheet I, exhibit 5, and sold it separate from the distributing

(Testimony of Fred Stebler.)

system and the adjustable bins. Is that not the fact?

A. Not subsequent to this infringement.

Q. 56. Prior to that?

A. Prior to that; yes. [93]

Q. 57. And the established price at that time was $175?

A. Yes. But let us not misunderstand each other. The grader at that time was $175 and did not include the cull belt, which was later included.

Q. 58. And the cull beltings are the cull belts referred to on sheet I, exhibit 5, and as being embraced in the greater selling for $175? A. Yes, sir.

Q. 59. (By Mr. LYON.) Look at those two sheets and see which one of those you have been testifying to, so that there will be no mistake.

A. No; we have got in wrong here. Sheet I, as you have it marked here, is the belt distributing system. I think these are simply marked wrong. Just turn them over and mark them reversed and you will have them right.

Q. 60. (By Mr. ACKER.) Do your books show the amount of time devoted by you in installing the fruit grader in the College Heights Orange Association at Clarement, California?

A. I am afraid not segregated; no.

Q. 61. Is there any thing or any record in your establishment which will show the time of the men expended in installing the fruit grader in connection with the College Heights Orange Association, by which I mean the fruit grader referred to on sheet I of exhibit 5. A. I think not.

(Testimony of Fred Stebler.)

Q. 62. I wish you would make an examination of your books for the purpose of telling.

A. I can tell you now there is no use of making an examination. The time is not kept in books. We have regular time tickets which I feel very sure have been destroyed for that time. And even that, I don't think, is segregated. The men turned in their time per day, but not usually segregated between the different [94] parts of the machine.

Q. 63. How would you arrive at the freight item on sheet I of exhibit 5?

A. This way: I know from having shipped a number of these machines separately that the average shipping rate is about a ton or 2,000 pounds, and I also know the rate, which is the first class rate, and the average distance which I took at Glendora. That would be our average distance for Southern California. And it would be about 23 cents—the first class rate— and that is, I think, as accurate as can be obtained. The weight is the average weight, and the rate can be verified.

Q. 64. How many miles from Riverside to Glendora?

A. In the neighborhood of 40 to 50 miles.

Q. 65. Do you consider that the average mileage in connection with all the graders?

A. Yes, sir; in Southern California.

Q. 66. Then you have got the freight rate by a general average? A. Yes, sir.

Q. 67. In the same way that Mr. Parker arrived at his freight rate? A. I don't know what he did.

(Testimony of Fred Stebler.)

Q. 68. You understood that he said he arrived at it by a general average?

A. Yes, sir; I so understood it.

Q. 69. Have you any record which will show the gross business of your establishment since the commencement of the infringing act herein complained of? A. No; our books don't show it.

Q. 70. How did you arrive at the 2% overhead expense? [95]

A. That was taken from our last year previous to this.

Q. 71. Have you all the records in your establishment from the last year previous to this as to the expense in connection with your business?

A. I won't be sure that I have all of them.

Q. 72. Have you all the data at your place of business on which you made this expense item referring to the overhead expense? A. I think so.

Q. 73. And that would show all the business done by you in connection with the other lines of machinery?

A. As a whole; as a gross, yes, but not separated.

Q. 74. Would you be able to separate from the gross amount of business the business which was done in connection with the fruit grader during that period?

A. No; I think not, for this reason: In a great many instances graders were sold under contracts in connection with other articles. We made the contract as a whole and not itemized.

Q. 75. Prior to the manufacture of the machines

(Testimony of Fred Stebler.)

involved in the present accounting, were you engaged in the manufacture of what is known as the California Grader?

Mr. LYON.—Objected to as not cross-examination, irrelevant and immaterial, and a matter which has been entirely passed on both by the District Court and by the Court of Appeals, in this case.

Mr. ACKER.—It was passed on as an anticipation. I am not examining him as to the anticipation.

The MASTER.—In what way is it material?

Mr. ACKER.—It shows the difference between the cost and selling price of the California grader over this grader. [96]

The MASTER.—The objection is sustained.

Mr. ACKER.—Exception.

Q. 76. Have you ever made a grader 34 feet in length? A. Yes, sir.

Q. 77. What was the price in connection with the 34-foot grader? A. I should say $175.

Q. 78. I mean the cost price—shop expense.

A. I haven't that.

Q. 79. Have you any way of figuring that out?

A. No, sir; not now.

Mr. ACKER.—That is all I care to ask Mr. Stebler, with the exception that I would ask him to examine his books and endeavor to give us a somewhat more accurate statement as to the labor incident to installing these plants. I did not suppose two men could put them up in a day. I think his charge of $10 is an exceedingly small item.

(Testimony of Fred Stebler.)

Redirect Examination.

(By Mr. LYON.)

Q. 80. What have you to say in regard to the cost of installing these graders, based upon your experience in your business and observation of the installation thereof, as to the length of time and cost of said installation?

A. Nothing further than what I have practically testified to, in following as I do personally all my work. I know as a rule with men, from my experience, about how long this work takes. For instance, I know of at least one case where I sent two men to East Highlands to put up one of these graders of the longer type in the house of the Stewart Fruit Company. These were not high priced men, either. I paid one $2.50 a day and the other [97] $3 a day. And I know they put that machine up in one day. That is about as positive as I can put it. It is on such observations as this that I base my statement.

Q. 81. Have you other instances that you could recall of the particular time and the particular men installing the grader?

A. No; I do not recall any particular instances just now.

Q. 82. Again looking at Complainant's Exhibit No. 5, how do you derive from this statement the cost of building and installing the single or small size or half-grader?

A. Simply by dividing the amount by two, for the reason that with a few exceptions there is just half the amount of material in them, and consequently

(Testimony of Fred Stebler.)
half the amount of labor.

Q. 83. You say "with a few exceptions." What exceptions?

A. The exception is this: Ordinarily a half grader is backed up against the wall or built against the wall, in which case the machine is practically cut in two through the middle. The exception is where the machine is set out on the floor and we have to supply the extra back supports to hold up the outside.

Q. 84. When you say "back supports" you mean the legs of the frame?

A. The legs of the frame which would be used in setting a double grader.

Q. 85. What would be the cost of such back legs used?

A. There are 32 of them shown on sheet II, exhibit 5, at a cost of $2.96.

Q. 86. And you would divide that item in two in case the half grader was set out from the wall?

A. Well, we would divide the item of $236.05 by two, and add $2.96 to the quotient.

Q. 87. When you stated that you sold the graders at $175 for [98] the upper portion of the grader, what have you to say as to the orders for equipment including more or less than what is shown on sheet I, as to a complete and operative machine as sold by you during the term of this infringement?

A. I don't know just what you want.

Q. 88. What I mean, is, did your order include simply such portions, or did it include the portions comprised on sheet II, in order to make a complete machine?

(Testimony of Fred Stebler.)

A. Well, with a few exceptions the grader was invariably supplied with bins of some kind. The grader, of course, is of no*t* value without bins. The exceptions were in cases where some other grader had been in use and they had the bins for it, and they took the old grader off and put the new grader on with the old bins, in that manner giving them a complete machine.

Q. 89. In other words, the old grading runway was removed and the runway of this particular patent was mounted simply on the bins of the old installation. Is that correct?

Recross-examination.

(By Mr. ACKER.)

Q. 90. What did you pay your men engaged on the outside work or erecting the graders referred to in sheet I of exhibit 5?

A. We have no fixed price. We have paid all the way from $2 to $5 a day.

Q. 91. You have given as outside labor work the item of two men and expenses $5 a *w*ay, amounting to $10. Please tell me exactly what is included in that item.

A. Their wages and such incidental expenses as they were allowed.

Q. 92. What wages were paid those men? [99]

A. I was just saying we have no fixed definite rate. I simply have to strike an average.

Q. 93. At what rate did you figure in compiling this labor? A. $3.50 for labor.

Q. 94. And what were the expenses which added

(Testimony of Fred Stebler.)

to the wages made $5 a day per man?

A. $1.50 per man.

Q. 95. What were they?

A. Their mileage and sometimes meals, but not always.

Q. 96. Please examine this letter and state whether it is a letter written by you to the parties addressed.

Mr. LYON.—Objected to on the ground that it appears from the letter that it is dated September 12, 1904, three years prior to the commencement of the infringement, and can have no bearing as fixing the established price or the cost of manufacture during the period of the infringement herein.

The MASTER.—The objection is overruled. Answer yes or no.

A. Yes; that appears to be a letter written by me.

Mr. ACKER.—We offer it in evidence, and ask that the same be marked Defendant's Exhibit Stebler Letter "A."

Mr. LYON.—The objection is repeated to this offer.

The MASTER.—The objection is sustained.

A. I don't think it bears my signature.

Mr. ACKER.—The letter is not offered for the purpose of establishing a selling price, but to show the construction that this witness as the owner of the patent places on the grader therein covered.

The MASTER.—That would not be material here on an accounting.

Mr. LYON.—The same objection is made, inas-

(Testimony of Fred Stebler.)

much as it was his [100] business policy and manner of doing business and making a profit at that time. But it is years prior to this controversy, and he has a right to change prices and methods of handling the patent at any time he desires.

The MASTER.—The objection is sustained, and it will be marked exhibit 2.

(Marked Defendant's Exhibit 2.)

(An adjournment is now taken until to-morrow, Friday, August 7, 1914, at the hour of 11 o'clock A. M. at this same place.) [101]

[Proceedings Had August 7, 1914, 11 A. M.]

Office of Hon. LYNN HELM,
Title Insurance Building,
Los Angeles, Cal.,
Friday, August 7, 1914, 11 o'clock A. M.

This being the time and place to which the further taking of proofs in this case was continued, proceedings are now resumed.

Present: Hon. LYNN HELM, Esq., Special Master.
FREDERICK S. LYON, Esq., Solicitor for Complainant.
N. A. ACKER, Esq., Solicitor for Defendant.

The Master, together with counsel for both parties and the reporter, thereupon proceeded to the city of Pomona, Los Angeles County, California, where the Master and counsel proceeded to the packing-house of the Pomona Fruit Growers' Exchange and inspected machines of the type and construction manufactured by complainant under the patent in suit,

(Testimony of Fred Stebler.)

and machines manufactured by the defendant Parker under the Parker patent referred to in the interlocutory decree herein.

Whereupon the aforesaid parties proceeded to the town of Rialto, San Bernardino County, California, where at 3:45 P. M. the said party visited the packing-house of the Orange & Lemon Association and inspected a machine built by complainant under the reissue patent in suit and also a certain other grader arranged near the west wall of the packing-house of said company and in regard to which defendant called Edgar R. Downs, who testified as follows:

[Testimony of Edgar R. Downs, for Defendant.]

EDGAR R. DOWNS, produced as a witness on behalf of defendant, and being first duly sworn according to law, testified as follows: [102]

Direct Examination.

(By Mr. ACKER.)

Q. 1. Please state your name, age, resident and occupation.

A. My name is Edgar R. Downs; I reside here in Rialto; I am the secretary and manager of the Rialto Orange & Lemon Association.

Q. 2. For what length of time have you been such secretary?

A. Between two and three years that I was manager; but I was secretary before that and employed in the office here since December, 1907.

Q. 3. Do you use in the packing-house of the Rialto Orange Association any machinery for the grading of fruit? A. We do.

(Testimony of Edgar R. Downs.)

Q. 4. If so, what machines are used?

A. These sizers or graders that are employed out here, said to be manufactured by Stebler, and one of them that was here—I don't know the pedigree of it.

Q. 5. You say there was one that you do not know the pedigree of. For what length of time was it in use in the packing-house to your knowledge?

Mr. LYON.—We object to that as irrelevant, immaterial and inadmissible, and on the ground that it is not proper to show any matters with regard to the prior art under the reference here, save and except in so far as the same might apply to the question of the profits derived from the use of the infringing machine by the defendant Riverside Heights Orange Growers' Association, and if such evidence is offered for any other purpose we submit that the matter is *res adjudicata* between the parties as to the condition of the prior art and as to the construction to be placed on the patent in suit; and before the Master the defendant cannot make any further or additional showing of the said prior art than what they have made in their case in chief. [103]

The MASTER.—The objection is overruled.

Mr. LYON.—Exception.

A. To my knowledge it has been in use for seven years. That is, it was in use when I came here in December, 1907.

Q. 6. (By Mr. ACKER.)—What machine have you reference to in your last answer?

A. The one against the wall.

Q. 7. In your packing-house?

(Testimony of Edgar R. Downs.)

A. In this packing-house, to the extreme west, against the wall.

Q. 8. I hand you a series of photographs and ask you to examine the same and ask you to state whether you can identify those photographs or not.

A. The one I mean is this one.

Q. 9. Referring to the photograph you have just handed me?

A. It is shown here against the wall.

Q. 10. Do these photographs all relate to the same machine?

A. They show more than one here. For instance, this one shows two. This is the one that is shown against—these are the same. Here is another one, and here is the one against the wall.

Q. 11. These three photographs refer to the same machine. Is that what you mean? A. Yes, sir.

Q. 12. There is the machine which you say was in use in the packing-house when you took employment here seven years ago? A. Yes, sir.

Mr. ACKER.—I wish to introduce these in evidence and ask that the same be marked respectively Defendant's Exhibits Photos Grader 3, 4 and 5.

Mr. LYON.—The same objection is noted to the questions asked the witness in regard to this grader or its use—that it is incompetent, irrelevant and immaterial upon this matter, and not [104] admissible, and *res adjudicata.*

The MASTER.—The objection is overruled. I think the exception that you put into your objection is enough to admit the evidence.

(Testimony of Edgar R. Downs.)

Q. 13. (By Mr. ACKER.) What is the length of the machine which you have referred to as against the wall and as having been in use for the seven years?

A. I should say about 32 feet. I don't know exactly.

Q. 14. How are the rollers in that machine connected, if connected at all? A. I cannot say.

Q. 15. You can examine the machine and then state, can you not? A. Yes, I could.

Q. 16. Please go out and examine the machine.

IT IS STIPULATED on the record that the rollers constituting the rotating wall of the gradeway of the grader referred to are connected one to the other for rotation, and they are all driven in unison from power applied at one end by means of a sprocket.

By Mr. ACKER.—Do you also admit that the bearings of the rollers adjust the rollers from and toward the fixed member of the runway?

Mr. LYON.—As to the whole; yes.

Mr. ACKER.—What do you mean by that?

Mr. LYON.—That there is no separate and independent adjustment of the openings.

Mr. ACKER.—Will you stipulate that the rollers of the grader constituting the rotating wall member of the runway are mounted in bearings, which bearings are adjustable toward and from the fixed member of the runway to vary the position of the rotating rollers relative thereto, the adjustable bearings separating two ends of adjacent rollers? [105]

The MASTER.—Only every other end?

(Testimony of Edgar R. Downs.)

Mr. ACKER.—Yes; every other bearing covers two adjacent ends.

Mr. LYON.—Yes. Subject to the objection as to the admissibility of such evidence, and with the reservation that the manner of supporting and adjusting the roller side of the runway of said grader is not such as to permit in any manner the individual adjustment of separate grade openings formed by the roller surface and the belt, and that in this respect the machine corresponds to the California grader as set forth in the record herein and covered by the testimony of both complainant's and defendant's witnesses. In other words,—

The MASTER.—Is that accepted?

Mr. ACKER.—Yes; that is all right. Will you stipulate that the machine concerning which the witness has testified is licensed under the Ish patent?

Mr. LYON.—I will stipulate that after this corporation, the Rialto Orange & Lemon Association, manufactured said machine in 1905, they were called upon by the complainant herein as the owner of the Ish patent and—

Mr. ACKER.—What was the date of that license?

The WITNESS.—The date in the book is March 11, 1905.

Mr. LYON.—And on March 11, 1905, said Rialto Company paid to the complainant herein the sum of $50 as a license fee under the Ish patent.

The MASTER.—Is that satisfactory?

Mr. ACKER.—That is all.

Mr. LYON.—That is all.

(Testimony of Edgar R. Downs.)

The party thereupon proceeded to Riverside, California, where the packing-house of the defendant Riverside Heights Orange Growers' Association was visited and where machines built by defendant [106] Parker and installed therein were inspected and certain tests made by the defendant Parker in the presence of the Master, and thereupon an adjournment was taken until 8 o'clock P. M., to meet at the Glenwood Inn for the taking of testimony.

At the hour of 8 o'clock P. M. on this 7th day of August, pursuant to the adjournment hereinbefore noted, the Master and counsel for the respective parties reassembled at the Glenwood Inn, and the following proceedings were had:

[Testimony of Arthur P. Knight, for Complainant.]

ARTHUR P. KNIGHT, produced as a witness on behalf of complainant, and being first duly sworn according to law, testified as follows:

Direct Examination.

(By Mr. LYON.)

Q. 1. You are the same Arthur P. Knight who has testified heretofore in this case on behalf of complainant, are you? A. Yes, sir.

Q. 2. Have you examined the grading machines now in use by the Riverside Heights Orange Growers' Association at its packing-house at Riverside, California? A. Yes, sir.

Q. 3. Have you ever seen in operation any of said machines other than at Riverside, California?

A. I have seen machines in operation similar to the

(Testimony of Arthur P. Knight.)

one type of machine at Riverside Heights packing-house.

Q. 4. Which type?

A. The type with the rolls of uniform diameter throughout, and provided with sticks or guides for limiting the outlet for the fruit.

Q. 5. And where did you see that construction of machine other than at the Riverside Heights Orange Growers' Association packing-house? [107]

A. At the packing-house of the Pasadena Orange Growers' Association at Pasadena, California.

Q. 6. And on how many occasions have you seen that machine? A. Twice.

Q. 7. You have referred also to a second type of grader now in use by the defendant Riverside Heights Orange Growers' Association. Wherein does that differ from the one just referred to by you?

A. The other type of grader at the Riverside Heights packing-house is provided with rollers which are tapered so as to be smaller at the upper end or the end nearer the feed end of the machine.

Q. 8. And how were these rollers arranged in such machine with respect to each other?

A. They were arranged end-to-end in each case.

Q. 9. And which end towards which end of adjacent rollers?

A. I supposed you refer to the machine with tapering rollers. In that machine the large end of each roller was arranged next to the small end of the adjacent roller.

Q. 10. And what means were employed or provided

(Testimony of Arthur P. Knight.)

in such machine for adjusting the height of the rollers toward or from the inclined carrier belt on which the oranges rested as they were carried along the series of rolls?

A. A bracket provided with an adjusting screw, the rotation of which served to vary the distance of the bearing of the rollers from the other member of the grading opening.

Q. 11. In such type of grader so used by the defendant Riverside Heights Orange Growers' Association, in which the tapering rollers are used, of what is the fruit runway composed?

A. The fruit runway is composed of a traveling belt, forming one edge of the grading opening, and a series of rollers mounted end [108] to end in substantial parallelism with the belt, but with the distances of the rollers from the belt graduated in successive rollers so as to form a gradual increase in width of the grading opening between the roller and the belt from the feed end toward the other end of the machine.

Q. 12. You are familiar with letters patent of the United States No. 997,468, granted to the defendant, George D. Parker, on June 11, 1911, and being Complainant's Exhibit Parker Patent in suit, and the construction of the grader therein shown and described? A. Yes, sir.

Q. 13. And you are familiar with the machines which the defendant has manufactured and sold substantially embodying the construction of said Complainant's Exhibit Parker Patent as referred to in

(Testimony of Arthur P. Knight.)

your former testimony in this case? A. Yes, sir.

Q. 14. In order to shorten your testimony, I will ask you to state what changes have been made in the machines thus manufactured and sold to the Riverside Heights Orange Growers' Association by the defendant George D. Parker under this Complainant's Exhibit Parker Patent, to comprise the two forms of the graders referred to by you this evening, directing your first attention to the changes, if any, that have been made in the belt-supporting devices and controlling device therefor, as they originally existed in the machines of Complainant's Exhibit Parker Patent.

Mr. ACKER.—To shorten the examination, I will admit that the new devices which are now referred to are the same in construction as the old one in suit, as far as related to the nonmovable guideway, the belt for propelling the fruit through the gradeway, but that it differs from the device held to be an infringement to the extent that the rollers constituting the outer member of the runway are not independent of each other and independently adjustable toward and from the fixed or nonmovable member, and the further fact that they are not independently rotatable, the [109] rotary wall member of the new device being placed on the market by Mr. Parker consisting of a plurality of connected rollers driven in unison from one end of the machine, and the rollers being mounted in bearings, the bearings supporting two adjacent ends of the rollers.

Mr. LYON.—In view of the statement of counsel,

(Testimony of Arthur P. Knight.)

all of which I cannot accept, I will ask the witness to state to what extent he agrees with or disagrees with the statement of counsel with respect to said machines.

A. The statement of counsel is correct in so far as it relates to the belt, and it is also correct in so far as it relates to the rollers being mounted and operated so as to rotate together. I do not find, however, that either of the machines at the Riverside Heights packing-house provides a construction which answers the definition of counsel when the principle of action of the same is considered. In both of these machines it is true that the adjustable mounting of the bearings support the adjacent ends of two adjacent rollers. But the construction of the rollers in the case of the tapered-roller machine, and the provision of the guides or sticks in the case of the other machine, is such that whatever adjustment may be effected for the upper roller of the two adjacent rollers within the limits of practical operation, is ineffective in controlling the sizing operation, and, therefore, the larger portion of the tapered roller in one machine or the portion of the roller in the other machine that extends over the stick or guide, corresponds to the idle space constituted by the overlapping sticks in the Parker patent. Therefore, in my opinion, the mode of operation of both these machines, namely, the tapered roller machine and the straight roller machine with the guides or sticks, is substantially the same as that of the [110] Parker patent in that it provides for limiting the outlet opening between

(Testimony of Arthur P. Knight.)

the roller and the traveling belt to a definite portion of the unit—that is, to the upper end portion thereof—thereby representing the same function in delivering the fruit of a certain size at a definite portion of the open space that is presented by the corresponding device in the Parker patent. I would therefore say that I consider, when the mode of operation of these machines is taken into account, that they present the independent adjustability of the different roller elements.

Q. 15. (By Mr. LYON.) You state that you consider that both these types, the type with the conical rollers and the type with the straight rollers and sticks, present the same or substantially the same mode of operation. What have you to say with respect to the substantial difference or substantial identity in the mode of performing the function and of grading and of securing individual adjustability of the grade openings.

A. I consider them substantially the same. In one case the limitation of the width of the grade opening is effected by the tapering roller so as to bring it down toward the belt. In the other case the limitation of the opening is provided by extending an obstruction, namely, the stick, upwardly from the surface, supporting the traveling belt, the function being the same in either case.

Q. 16. The defendant's contention, as you are aware, in the original hearing of this case was that the machine of the type of Complainant's Exhibit Parker Patent did not infringe claims Nos. 1 and 10

(Testimony of Arthur P. Knight.)

of the reissue patent in suit, for the reason that the overlapping guide arms did not form a continuous roller wall for the side of the fruit runway. What have you to say with relation to these two types of graders referred to by you, to wit, that [111] having the conical rollers and that having the straight rollers and sticks, with relation to this feature of the device of the Complainant's Exhibit Parker Patent?

Mr. ACKER.—I object to that question as assuming the defense which was made in the case. It is not a correct statement. The defendant in the suit referred to contended and contended strenuously that in the defendant's machine there was not embodied a series of end-to-end independently adjustable and independently power-driven rollers. The defense was not based as differentiating the defendant's device from the complainants solely on the ground that the overlapping arms did not constitute the runway of the complainant's patent. That was only one of the features involved in the defense. And I submit that the record in the case is the best evidence on that point, and the Master will draw his conclusion from the records.

Mr. LYON.—The question does not assume that I have stated all the points of defense, and I will ask the witness in answering this question to answer it as put, and then to answer it having in view the remarks of counsel for the defendant, and answer fully in regard to each of those.

The MASTER.—You may answer the question.

A. In so far as these sticks by their overlapping

(Testimony of Arthur P. Knight.)

and longitudinal adjustment provide for the longitudinal shifting of the grade units or sizer stands, the function of which was to shift the point of delivery of each sizer unit, for the purpose of convenience in delivery, to different bins, these two machines at the Riverside Heights packing-house do not present this special feature of the Parker patent. But in regard to the point of defense to which you refer, namely, that the provision of these overlapping sticks prevented the rollers from being end-to-end, and removed them from the principle or mode of operation of the Strain patent, I would say that the idle portion of each grader [112] unit in these two machines at the Riverside Heights packing-house, namely, the lower end portion of the tapered rollers, where the space left between the roller and the belt is too small to receive an orange of the size that will pass the larger space at the upper end of the roller, and the lower end portion of the straight rollers which extend over the obstructing stick or guide, also forming a contracted space which does not permit the passage of an orange of the size which would pass through the opening at the upper end portion of the same roller, corresponds identically in function and mode of operation to the idle portion of the runway formed by these overlapping sticks in the Parker patent.

In regard to the other points of definition that counsel referred to, I would say that these two machines present the end-to-end arrangement of the rollers in the same manner as in the Parker machine,

(Testimony of Arthur P. Knight.)

with the additional feature that they are even closer end-to-end than they are in the Parker patent, and the former machines constructed in accordance therewith. These two machines at the Riverside Heights packing-house also present the rotary action of the rollers, but the rollers in both cases are positively driven instead of being rotated by the fruit.

In regard to the independent adjustment of the rollers, I have already stated my opinion in the matter.

Q. 17. (By Mr. LYON.) Now, with respect to the mechanical rotation of the rollers in the two types of machines at the Riverside Heights Orange Growers' Association, referred to by you, to wit, that embodying the conical rollers and that embodying the straight rollers with sticks, how does the rotation of the rollers therein correspond or differ in function or effect from that of the Strain reissue patent in suit?

A. In the Strain reissue patent each roller is driven by a [113] separate belt from a common shaft. In the two machines at the Riverside Heights packing-house a series of end-to-end rollers are so connected end to end that they are all driven from the roller at the head end of the machine. The function in regard to rotation of the roller is the same in each case, since they all rotate together in either case.

Q. 18. You are familiar with the patent in suit, are you? A. The Strain reissue patent?

Q. 19. Yes. A. Yes.

Q. 20. And were examined with respect to the subject matter of both claims 1 and 10 in this case. Will

(Testimony of Arthur P. Knight.)

you please take each of said claims and, in accordance with your understanding thereof, state wherein the two machines at the Riverside Heights Orange Growers' Association to which you have just referred, correspond or differ in function, principle of operation or inter-relation of parts, from the combination of these respective claims as understood by you?

Mr. ACKER.—I object to that question as calling upon the witness to construe a claim. It has been repeatedly held that the construction of a claim is the province of the Court and not of the witness. He is an expert called to define the construction of the machine, and not to construe a claim. And in this particular case our Circuit Court of Appeals has construed the claims of the patent, and it is immaterial what this witness' idea may be or what his view as to the claims is.

Mr. LYON.—I believe the first objection is good, that it is not the province of expert witness to construe claims at any time. But I thought perhaps that you might yourself want to ask some questions in regard to some features, and therefore an explanation of the terms involved might be proper. Unless you [114] for your own purposes care for something of that kind, I do not care especially for it.

The MASTER.—The objection is sustained.

Mr. LYON.—You may take the witness, Mr. Acker.

(Testimony of Arthur P. Knight.)

Cross-examination.

(By Mr. ACKER.)

Q. 21. Would it be a fair statement that the rollers in the machine which you have just been testifying to at the Riverside Heights *Orange Association,* and also at the Pasadena packing-house which you have testified to, constitute a single roller throughout the length of the runway?

A. I don't think that would be a fair definition.

Q. 22. You have an affidavit, did you not, Mr. Knight, in connection with equity suit No. 92 pending in the United States District Court for the Southern District of California, entitled Fred Stebler vs. George D. Parker and the Pasadena Orange Growers' Association, such affidavit being for the purpose of a preliminary injunction in connection with the claim of infringement by Mr. Parker, through the use of this new device, of two separate patents which were not involved in the suit on which the present accounting is taken.

The MASTER.—Have you the affidavit?

Mr. ACKER.—I have, your Honor.

The MASTER.—You may show it to him.

(The affidavit is handed to the witness.)

A. Yes.

Q. (By Mr. ACKER.) In the affidavit which you have just examined and which you state you gave, I will ask you whether the two patents I now hand you are the two patents referred to in the said affidavit. **[115]**

Mr. LYON.—Objected to as irrelevant, imma-

(Testimony of Arthur P. Knight.)

terial and incompetent to the issues of this suit, and needlessly incumbering the record.

The MASTER.—Answer the question yes or no.

A. Yes.

Q. 23. (By Mr. ACKER.) In your comparison of the new machine of Mr. Parker with the patents to which your attention has just been called, you contended in your affidavit, did you not, that the new machine of Mr. Parker conformed to the machine of the Thomas Strain patent No. 775,015 of November 15, 1904, for fruit grader?

Mr. LYON.—Objected to as not cross-examination, irrelevant, immaterial, and upon the further ground that it appears that the patent referred to is a subsequent patent to the patent in suit, and can have no bearing upon the scope or interpretation to be placed upon claims 1 or 10 of the Strain reissue patent here in suit.

Mr. ACKER.—In reply to that objection, if your Honor please, I am not asking this witness to construe claims 1 and 10, or any construction based thereon, but I wish to show by the witness's own affidavit that his testimony in the affidavit was at variance with the testimony as now given.

Mr. LYON.—I wish to add to the objection that it is not the proper method of proof. The affidavit should be offered in evidence.

Mr. ACKER.—We will offer the affidavit in evidence in due time.

The MASTER.—The objection is sustained. The affidavit is the best evidence.

(Testimony of Arthur P. Knight.)

Mr. ACKER.—I will offer in evidence the affidavit given by Mr. Knight in connection with equity suit No. A–92 in the case of Fred Stebler vs. George D. Parker and Pasadena Orange Growers' Association, now pending in the United States District Court [116] for the Southern District of California, and the Bill of Complaint, filed in connection with said suit, and ask that the same be marked Defendant's Exhibit — —.

Mr. LYON.—We object to the Bill of Complaint on the ground that it is incompetent, irrelevant and immaterial and needlessly incumbering the record, no foundation laid, it not being shown that the machine to which such Bill of Complaint was directed was the machine referred to by the witness in his testimony here this evening, and this objection will be also offered to the affidavit.

The MASTER.—Is there any reason for introducing the complaint?

Mr. ACKER.—No; I don't want to separate the papers. The affidavit is all I want.

The MASTER.—The objection is sustained to the complaint, and the affidavit will be received.

Mr. LYON.—Note an exception. Let the affidavit be copied in the record at this point. That will save his tearing the papers apart.

The MASTER.—I don't know that the affidavit need be copied. It is on file in the court as part of the records of that case and can be considered as read in the testimony.

(Testimony of Arthur P. Knight.)

Q. 24. (By Mr. ACKER.) What did you mean in your affidavit, Mr. Knight, by the following expression, when making the comparison between the Parker new machine and the device of the Strain patent No. 775,015, which expression reads as follows: "Such means in defendant's machine comprise a series of wooden rollers, so mounted as to constitute a single roller for the length of the machine."

Mr. LYON.—The question is objected to on each of the grounds stated in the objection to the affidavit.

The MASTER.—I look at it as proper cross-examination as testing the witness as to his testimony here in reference to the description **[117]** of the machines in evidence.

Mr. LYON.—Of course, I want to reserve the objection and the exception for the simple reason—of a difference in the machines—

The MASTER.—It is not a question of the difference in the machines, but it goes to the question of his description of the machines that he has given here tonight.

Mr. LYON.—It is not the same machine that he referred to in the Pasadena Orange Growers' Association.

Mr. ACKER.—I contend that it is the same machine.

Mr. LYON.—Part of it is the same and part of it is not.

The MASTER.—The objection is overruled.

Mr. LYON.—Note an exception.

A. In the sense that all of these rollers are so

(Testimony of Arthur P. Knight.)

connected that they rotate together, as I have already stated, they constitute a single roller. In regard to the mode of operation of the Strain machine and the corresponding mode of operation of these machines in respect to the individual selection of different sizes, it cannot be fairly said to constitute a single roller in this respect.

Q. 25. (By Mr. ACKER.) In the Strain patent with which you were making your comparison, the rotating member of the grade runway consisted of a single rod extending the entire length of the runway, did it not?

Mr. LYON.—The same objection.

The MASTER.—The objection is overruled.

Mr. LYON.—Exception.

A. Yes.

Q. 26. (By Mr. ACKER.)—And that was a rotating rod, was it not, throughout the length of the machine?

Mr. LYON.—The same objection.

The MASTER.—Overruled.

Mr. LYON.—Exception. [118]

A. Yes, sir.

Q. 27. (By Mr. ACKER.) The purpose of this affidavit was to convince the Court that the new machine of Mr. Parker consisted, to all intents and purposes, of a single rotating structure, extending the entire length of the fruit runway, was it not?

Mr. LYON.—Objected to as incompetent, irrelevant and immaterial, and not proper cross-examination and not the best evidence.

(Testimony of Arthur P. Knight.)

The MASTER.—The objection is sustained. You may answer the question subject to the objection. What the purpose is of the affidavit before the Court is immaterial in this matter, and for that reason I sustain the objection. The witness may answer subject to the objection.

A. The purpose of the affidavit or this portion of the affidavit was to show in regard to the mode of operation of the Strain patent referred to and the mode of operation of the alleged infringing machine referred to at that time, that these rollers had in the infringing machine the same function as the rod in the Strain patent.

Q. 28. (By Mr. ACKER.) Are not the rollers of the new grader of Mr. Parker and which you have examined to-day, connected one to the other, and mounted in their bearings in the same manner as the machine which you examined in giving the affidavit to which your attention has been directed?

A. I do not recall that alleged infringing machine sufficiently to swear to that.

Q. 29. Would a reading of your affidavit refresh your memory? A. It probably would.

Q. 30. I will ask you to examine the same.

A. As far as I can recollect and as far as my memory is refreshed by reading the affidavit, I would say they are the same.

Q. 31. Were not the rollers of the grader about which you gave the affidavit, and are not the rollers of the new graders [119] which you examined to-

(Testimony of Arthur P. Knight.)

day, connected one to the other in substantially the same manner as the rollers of the Ish patent, or what is known as the California sizer, were connected? You understand in my last question what is meant by the Ish patent, Mr. Knight? A. Yes.

Q. 32. I will ask you to answer the question with that understanding of the Ish patent.

Mr. LYON.—The question is objected to so far as it refers to the so-called California grader, on the ground that it is indefinite and uncertain as to what counsel means thereby. If he means the device of the Ish patent, that is one thing; and if he means a grader as he called at Rialto a "California grader," that is another thing.

Mr. ACKER.—I mean by the "California grader" that grader which was referred to in the testimony in the suit in which the present accounting is being directed, and as to which you testified in said suit.

A. In the Ish grader shown in the original patent there was really only one roller provided with a series of steps. But in the California grader there is, for example, at the Rialto packing-house—there are several rollers which are end-to-end, and which are connected to rotate together. In so far as this connection to rotate together is concerned, the construction of this California grader is similar to that of the two types of machines at the Riverside Heights packing-house.

Q. 33. Is it not a fact that in the California grader and equally so in the Parker new grader that all of

the rolls are arranged end to end and connected one to the other so that they are all driven in unison from power applied at one end of the machine?

Mr. LYON.—The question is objected to in so far as it refers to **[120]** such so-called California grader at the Rialto packing-house, on the ground that the same was not manufactured, known or used, or proven to be a part of the prior art, prior to the invention by Robert Strain of the subject matter of the patent here in suit, and all testimony with respect to such so-called California grader at the Rialto packing-house is objected to on the ground that it is incompetent, irrelevant and inadmissible at this time, upon the accounting, as the Master is to judge the question of prior art by the record in this case, and the matter of the prior art and the scope and validity of the Strain patent is *res ajudicata.*

Mr. ACKER.—In reply to that last objection, counsel seems to be laboring under the impression that I am endeavoring to prove a prior art to anticipate the patent under which this accounting is made. That is not the case. It is open to the defendant to show that he had a right to use any machine in the market prior to the time that he entered the field as an infringer. This California sizer which we examined to-day was a device in the market prior to the entry of the defendant in the field, and it is open to us to show to your Honor, and for your Honor to investigate and make full inquiries, as to what was open to the defendants to use.

The MASTER.—But if that was an infringement of the patent, why, then the defense fails, doesn't it?

(Testimony of Arthur P. Knight.)

Mr. ACKER.—If that is an infringement.

The MASTER.—And has not the decree in this case and the opinion of the Circuit Court of Appeals determined to what extent the prior art was in operation?

Mr. ACKER.—No, sir. The decision of the Court only determines the prior art to determine the want of invention. We are not inquiring into that. **[121]**

The MASTER.—No, but the decree of the Appellate Court goes into both questions.

Mr. ACKER.—It goes into the question of the prior art as set up in the case for the purpose of anticipation and noninfringement. Now, we are not attacking—

The MASTER.—But have not you had your day in court?

Mr. ACKER.—We are not attacking anything concerning the decree of the Court.

The MASTER.—But haven't you by your previous case had your day in court? And if you had as a defense that there was a California grader in use that you might have copied or used, that you should have set up in the case as a defense and not bring it in now?

Mr. ACKER.—What is now set up as a device being in use is the same device as was referred to by the Court—the California sizer. We are showing the form of the California sizer that was in use and which the defendant could have made use of and which any of the public might make use of it

(Testimony of Arthur P. Knight.)

at this time. We are not going on the question of infringement.

Mr. LYON.—That is what we are going on now. And I will state this for the information of the Master: that we will accept the amended statement of the Riverside Heights Orange Growers' Association that it has made no new profits in the use of the infringing machines up to the date of the interlocutory decree, so that the question of profits as against the defendant Riverside Heights Orange Growers' Association is eliminated from the case.

The MASTER.—I think I will sustain the objection. It seems to me as though all of those questions were covered in the preliminary trial.

Mr. ACKER.—An exception is noted. [122]

The MASTER.—You may answer the question subject to the objection.

Mr. LYON.—If you include the type at Rialto, you go into something that was subsequent and not before, and you cannot introduce more prior art.

The MASTER.—He is not trying to introduce prior art. His answer is now that these new devices that he has correspond with the Ish patent and not with the Strain patent, and that therefore he has a right to use them.

Mr. LYON.—Then he must not take some construction that has been made four years subsequent to this invention and which is not shown ever to have existed prior to this invention, and attempt to plead a prior art which he has not shown even existed.

(Testimony of Arthur P. Knight.)

The MASTER.—But suppose that California grader was built under the Ish patent and was exactly like it, and he shows it, and then he shows that his device here is exactly like the Ish patent?

Mr. ACKER.—We have shown your Honor today that this device was licensed under this patent.

The MASTER.—I understand. But isn't that part of your defense and not part of your examination of this witness?

Mr. ACKER.—But your Honor, they are now injecting into this examination a new phase of infringement.

The MASTER.—An infringement of their patent.

Mr. ACKER.—And now my answer is that we have gone back in the art and that we are constructing a device of the art as it existed when we came into the field.

The MASTER.—But isn't that part of your case and not cross-examination of this witness?

Mr. ACKER.—I have a right to show by this witness, as he has been cross-examined as to the record of the main case, and his [123] familiarity with the devices which he testified to in the main case. I certainly have a right to cross-examine on what counsel brought out himself. He brought out this record.

The MASTER.—But he did not bring out the record of that grader—that Rialto grader—in his direct examination.

Mr. ACKER.—I thought we would shorten the examination.

(Testimony of Arthur P. Knight.)

The MASTER.—Don't you have to confine yourself now under the new rules the same as in a hearing before the Court?

Mr. ACKER.—We can put it in with our own witness.

The MASTER.—The objection is sustained.

Q. 34. (By Mr. ACKER.) In a previous question, Mr. Knight, I asked you whether the rolls of the new grader of Parker might not be treated as *on* continuous roll, and your answer was no. In your affidavit you have referred to it as a continuous roll. Please explain the apparent conflict.

A. There is a discrepancy, but it is only apparent due to the fact that the device is viewed from two different angles. In one case it is being considered with reference to its similarity or dissimilarity to the Thomas Strain patent in which the independent transverse adjustment of the different rolls was the essential feature. In the other case it was being considered with reference to the delivering means, and in which the construction of the rolls was only broadly introduced, and the provision for independent adjustment was of no special bearing.

Q. 35. In the rolls of the new Parker grader as at present installed, does not the rotating member of the fruit runway comprise a member rotating in unison from one end of the grade-way to the other, or throughout the length of the grade-way?

A. Yes.

Q. 36. And that held true with the Strain patent

(Testimony of Arthur P. Knight.)

to which your affidavit was directed, did it not? [124]

A. Yes.

Q. 37. Does that hold true as to the construction of the rotating form of the wall member of the fruit runway of the Strain reissue patent to which the present accounting is directed?

A. I consider that it does substantially, so far as rotation. They rotate together by the action of the belt.

Q. 38. Isn't each roller driven independently of the others?

A. The drive is independent only in the sense that it is performed by a separate member, namely, the different belt. But there is no independence of action, inasmuch as if one rotates they all rotate, and they rotate together and stop together.

Q. 39. In the device of the Strain reissue patent the rollers are rotated irrespective of the small counter belt which supplies power?

A. Yes, sir; if the belt is taken off the rollers would rotate when the fruit is passing.

Q. 40. That is, they rotate by the frictional contact of the fruit? A. Yes, sir.

Q. 41. Is that true of the rollers of the new Parker grader?

A. You mean to ask whether they would rotate if the power was taken off?

Q. 42. Yes.

A. I cannot answer that. The other I answered

(Testimony of Arthur P. Knight.)

because I saw it by reason of the fact that it was in operation.

Q. 43. Your familiarity with the new Parker sizer as to which you have been testifying is not sufficient to enable you to state what the action would be if the power was taken off of the rollers? Is that correct?

Mr. LYON.—Objected to as irrelevant, immaterial and incompetent, inasmuch as it is alleged that the rolls in the two new Parker **[125]** constructions are rotating rolls and are power-driven rolls, and in this respect do differ from the device of Complainant's Exhibit Parker Patent, and correspond in mechanical drive to the mechanical rotation of the rolls in the reissue patent in suit.

The Master.—The objection is overruled. The objection is simply argumentative.

Mr. LYON.—Exception.

A. Do you mean so that there is no connection between the rollers and the driving means? I would have to know that before I could answer the question.

Q. 44. (By Mr. ACKER.) If a breakage took place between the transmitting gears for imparting power to the drive shaft or to the shaft on which the forward or drive roll is mounted, would the rollers rotate by fruit being passed through the runway through frictional contact?

A. If the break was at the gear on the roller shaft itself, so that the shaft is left comparatively free,

(Testimony of Arthur P. Knight.)

then it seems to me that the rollers might be rotated if enough fruit is in contact with the rollers and belt at any one time with sufficient friction.

Q. 45. Would that hold true as to the California sizer under the same conditions?

A. I should think so.

Q. 46. Did you not in your testimony in the suit in which the present accounting is taken testify that in the California sizer the rollers would not rotate by frictional contact of the fruit passing there through?

Mr. LYON.—Objected to on the ground that the witness is entitled to have the portion of the testimony referred to by counsel, if there be such testimony, called to his attention. The testimony of the witness is in the case and it is the best evidence of what he testified to. **[126]**

The MASTER.—I think he is entitled to the testimony.

Q. 47. (By Mr. ACKER.) I will get at it in another way. What would you have to say regarding the Parker sizers which you examined to-day in the Riverside Heights Orange Growers' Association packing-house, if the power which drives the belt were removed, so far as relates to those rollers, and when I say "the rollers," I mean the whole series of rollers rotating for practical working purposes, by the frictional contact of fruit passing through the fruit runway.

A. At the rate at which the fruit ordinarily comes down the runway, I do not think if the power were

(Testimony of Arthur P. Knight.)
removed there would be enough rotation—that there would be any considerable amount of rotation.

Mr. ACKER.—At this time I will offer in evidence the two patents referred to in the affidavit of Mr. Knight, and ask that the same be marked Defendant's Exhibits 6 and 7.

Mr. LYON.—Objected to as irrelevant, incompetent, not cross-examination, and needlessly incumbering the record.

The MASTER.—I am going to admit them as the affidavit was admitted, as referred to in it and partly explanatory of it.

Mr. LYON.—And it will be considered that they are objected to on the same ground as the affidavit was objected to?

The MASTER.—Yes.

Mr. ACKER.—In view of your Honor's ruling that the California sizer would more properly come from my own witnesses, I will discontinue the cross-examination of this witness.

(The two patents, offered in evidence are marked as requested by counsel.) [127]

Redirect Examination.

(By Mr. LYON.)

Q. 48. You have been asked certain questions in regard to this affidavit, Mr. Knight. What bearing, if any, had the mode of operation of the device of the Thomas Strain patent No. 775,015 upon the comparison of the Pasadena Orange Growers' Association machine as it existed at the time of making said affidavit, with the statements therein concerned, if any,

(Testimony of Arthur P. Knight.)

giving particular attention to the portion referred to by counsel on cross-examination.

A. If you refer to the mode of operation of the rotatable rod in the Thomas Strain patent, and the rotating rolls in the Pasadena Orange Growers' Association machine, the specific construction of these elements had no bearing on the general features referred to in said affidavit.

Q. 49. You made an examination of such machine as it existed at the Pasadena Orange Growers' Association prior to the making of this affidavit?

A. Yes.

Q. 50. How were the grading outlets of said machine controlled in such Pasadena Orange Growers' Association machine at the time of your first examination thereof? And when I say "controlled," I mean varied or adjusted.

Mr. ACKER.—Owing to the lapse of time that has intervened from the making of the affidavit to the present time, I submit that the affidavit itself which correctly sets forth the construction of the device, is the best evidence on that point.

The MASTER.—The objection is overruled.

A. I take it that you refer to the lateral adjustment—that is, the transverse adjustment—which, to my recollection, is effected by screws.

Q. 51. (By Mr. LYON.) Calling your attention to the Strain patent [128] and to the feature of raising the levers 13 by moving the wedges 16 in or out by manipulation of the lever 17, at the time of making this affidavit did such Pasadena Orange

(Testimony of Arthur P. Knight.)

Growers' Association machine contain devices for this purpose operating in any such manner?

A. I cannot recall them.

Q. 52. To refresh your recollection, you made a subsequent examination of this Pasadena machine and found that certain portions of the wooden frame on which the belt runs had been sawed and had been nailed in place, and the adjusting screws of what might be termed trap-door effects had been removed.

Mr. ACKER.—Objected to as extremely leading.

The MASTER.—The objection is overruled.

A. Yes; I now recollect it.

Q. 53. (By Mr. LYON.) What were these trap-door-like portions of such runway in said Pasadena machine originally arranged for?

A. They determined the position of the outlet opening for the fruit. The adjustment of these trap-doors served to adjust the width of the opening.

Q. 54. And what changes, on examining this Pasadena Orange Growers' Association machine the second time, did you observe with reference to the manner of securing such individual adjustment of these grade openings?

A. As far as my examination of the machine showed, the adjustment of the grade openings is made now by screws similar to that of the straight roller machine in the Riverside Heights packing-house.

Q. 55. And contained also the strips under the rollers in blocking out a portion thereof?

A. Yes, sir.

(Testimony of Arthur P. Knight.)

Mr. LYON.—That is all. [129]

The MASTER.—Is the signature of the witness waived?

Mr. ACKER.—Yes. I understood that to be the case.

Mr. LYON.—Yes.

(An adjournment is now taken until to-morrow, August 8, 1914, at 9 o'clock A. M., at the same place.) [130]

[Proceedings Had August 8, 1914, 9 A. M.]

Glenwood Inn, Riverside, Cal.,

August 8, 1914, 9 o'clock A. M.

This being the time to which the further taking of proof in this matter was continued proceedings are now resumed.

Present: Hon. LYNN HELM, Special Master.

FREDERICK S. LYON, Esq., Solicitor for Complainant.

N. A. ACKER, Esq., Solicitor for Defendant.

[Testimony of Fred Stebler, for Complainant (Recalled).]

FRED STEBLER, recalled on behalf of complainant, testified as follows:

Direct Examination.

(By Mr. LYON.)

Q. 97. When did you first see the grader or graders being installed in the Pasadena Orange Growers' Association packing-house at Pasadena by the defendant George D. Parker?

(Testimony of Fred Stebler.)

A. I think in either August or September last year.

Q. 98. With relation to the control of the size of the grade openings how at that time was such machine constructed?

A. Their control of the grade openings at that time, as the construction showed, was by means of adjustable trap-doors beneath the traveling belt.

Q. 99. And you thereupon brought suit against Mr. Parker and the Pasadena Orange Growers' Association on the Thomas Strain patent No. 775,015, did you? A. Yes.

Q. 100. What was done by Mr. Parker with respect to such machines immediately upon the bringing of such suit?

A. The construction of them were changed with reference to the adjustment of the grade openings. [131]

Q. 101. In what respect and how?

A. The adjustments were taken off the trap-doors just before mentioned, and the doors themselves were nailed fast in a fixed position, and an adjustment was provided for the roller or rotating member of the grade-way.

Q. 102. What adjustment?

A. By means of adjusting screws by which the gradeway or the aperture in the gradeway could be varied by raising or lowering the roller.

Q. 103. What kind of a roller side did such graders at such Pasadena Orange Growers' packing-house have?

(Testimony of Fred Stebler.)

A. They had straight rollers. That is rollers of uniform diameters from end to end.

Q. 104. And in what way was the adjustment of the several grade openings secured? Coincident, or for the length of the entire roller set, or independently? I mean after the removal of the trap-door arrangement and the provision of the other adjusting device.

A. The adjustments were provided at the grade opening.

Q. 105. You have seen the two machines to which the Master's attention was called yesterday at the Riverside Heights Orange Growers' Association in which the conical rolls are used in one, and the rolls of the same diameter throughout in the other, have you? A. Yes.

Q. 106. And in the latter of these machines you have directed attention to the sticks or filler pieces, have you? A. Yes, sir.

Q. 107. In this machine in the Pasadena Orange Growers' Association packing-house, after the removal of the trap-doors, were any such filler stick devices used therein?

A. They were put on later; yes. [132]

Q. 108. What was the purpose of those devices in both of the machines, to wit, the machine of the Pasadena Orange Growers' packing-house and the machine at the Riverside Heights packing-house?

A. Apparently to close up the large end of the grade opening for about three-quarters of its length,

(Testimony of Fred Stebler.)

so that no fruit could pass through the grade opening at that point.

Q. 109. You have observed both of these machines in actual operation on different occasions?

A. Yes.

Q. 110. And understand the operation thereof?

A. Yes, sir.

Q. 111. Please explain to us the method of such operation, and also the mode of securing the adjustment of the grade openings, and at such time, state what effect the adjustment of one grade opening has upon the adjustment of the grade opening or openings, if any.

A. The general operation of these machines is similar with all machines of that character, in that the fruit is introduced at one end and carried along the machine on the gradeways by the traveling belt until it comes to such point as the aperture of the gradeway between the traveling belt, and the roller is large enough to allow the fruit, or certain fruits, to pass through; it being understood, of course, that the fruits come to the machine varying in size, and the function of the machine is to separate these sizes, which is done by carrying them along this gradeway and rotating them between the traveling belt and the roller, and until they come to such point in the gradeway as the aperture will allow them to pass through. Such is the general function of all machines of this character. In these particular machines referred to, as originally built with the straight rollers, [133] as in the case of the Pasadena Orange

(Testimony of Fred Stebler.)

Growers' Association, in order to obtain a grading aperture of increasing width, it is necessary to run the rollers on an incline, you might say, or the axis of the rollers on an incline to the traveling belt, the result of which is to give a constantly increasing grade opening not only the entire length of the machine, but the length of each section of roller. And, as a consequence, the fruit would not come out at any one given point, but would come out all along the length of each section of the roller, by reason of the constant increase of the width of the aperture. This condition deteriorates from the function required of the machine,—I should say the result required from the machine,—in that the sizes are mixed. In other words, a given size for each bin would contain mixed sizes, in this way: that in one end of the bin, or the end next to the intake or small end of the aperture, the fruit would be smaller than it would be at the farther end. This is highly objectionable for the reason that very often it is desirable to put two packers on these bins, one packer not being able to take care of the fruit as fast as it comes. In that case the result we get is that in the end of the bin having the small size fruit, the boxes in that are finally filled up by the packer and would not be full enough, although containing the required number of fruits. While on the other hand, the box of the other packer working on that bin, although containing the same number of fruits, would be too full. This condition is not permissible. Therefore, in order to remedy this, it was necessary to close up the

(Testimony of Fred Stebler.)

greater portion of the large end of this grading aperture and allow the fruit to be taken out only at one point. This was done in the case of the Pasadena Orange Growers' Association and in the case of the first two machines that were changed over in the packing-house of the Riverside Heights Association last year, by inserting [134] the fixed stick in the aperture of this gradeway, with the result, as I have before stated, that the fruit would then come out only at the small end of the aperture, or a portion of the section of the roller for that bin. In the case of the later two machines changed over in the packing-house of the Riverside Heights Association, this was accomplished by increasing the diameter of the roller at the large end of the aperture enough so that the fruit could not pass through the grade aperture at this point when in normal adjustment, which had the same effect as the fixed stick, just above referred to, placed in the grading aperture. Not only did this arrangement eliminate the objections just above referred to of mixed sizes in the bins at the different ends, but it also enables the operator of these machines to control his sizes independently of each other within adequate limits, in this wise: that if it is found, as is often the case, that in adjacent sizes in the bins one of them is packing a little bit too large, or filling the box too full, it is only necessary to close the grading aperture at this point very slightly in order to remedy this. This is a highly desirable function and without it modern grading machines

(Testimony of Fred Stebler.)

could not be a success. I believe that answers the question.

Q. 112. What then, Mr. Stebler, have you to say with reference to both these two types of machines, the one at the Pasadena Orange Growers' Association, and the similar one at the Riverside Heights Orange Growers' Association, and the conical roller machine at the Riverside Heights Orange Growers' Association, as to the adjustment of the rolls toward and away from the belt to secure an independent or individual adjustment of the several grade openings with respect to such adjustment affecting the size of fruit discharge through or by means of the adjoining roller portion either just preceding or just succeeding such portion adjusted? And in answering this question, compare such effect [135] and result and the general method of securing such result with the same result and method of securing the result in the machine of the Strain reissue patent in suit, and, at the same time, compare the same with the same matter in the infringing machines of the type of the complainant's Exhibit Parker Patent.

Mr. ACKER.—I object to that portion asking the witness to make a comparison between the new Parker machine and the Parker machine of the patent held to be an infringement. So far as the comparisons called for as between the devices of the patent in suit, there is no objection one way or the other.

The MASTER.—The objection is overruled.

Mr. ACKER.—An exception is noted.

A. In the two types of the new Parker machines at

(Testimony of Fred Stebler.)

the Riverside packing-house, I have just pointed out in my answer to the previous question that it is possible for the present arrangement to control the adjacent size of fruit in the corresponding adjacent bins independently enough for all practical purposes; and I have pointed out how it was accomplished or how it was done; and I can only say farther that it is possible in either of these machines to so control those adjacent sizes, either preceding or succeeding, independently enough for all practical purposes. Of course, I do not mean to be understood as saying that any one individual size can be opened or closed to the extent of the full variation of one size or more, without affecting the adjacent sizes, for the reason that there is no provision made in these machines for taking care of these sizes in this manner in the bins without mixing them. But this is seldom desired, and I think not at all desired in this instance. But what is desired and must be had, is means to so adjust each individual size as to make it pack properly in its individual box. For instance, in the 150 size there are supposed to be 150 oranges in that box, and when that box is packed it is [136] supposed to be just so full and neither more nor less. The next adjacent larger size, I believe, would be 126, which must be packed likewise. Now, then, if it should be found that the 150 size was not filling the box sufficiently, then the operator would open that grading aperture very slightly but just enough so that enough fruits of increasing size would go into that bin to make that box come up finally to

(Testimony of Fred Stebler.)

where they wanted it. And this can be done without any question on these new types of machines as in the Riverside Heights Association and in the Pasadena Orange Growers' Association, and when this is done it is all that is required. Strain, of course, in his reissue patent was striving for this very thing, and he did it by adjusting his roller sections independently. Mr. Parker in his patent, as disclosed in Complainant's Exhibit Parker Patent, was striving for the same thing, knowing, of course, that his machine would have no value without it. Of course, his rollers were shorter than Strain's, and, therefore, he had a nongrading space, sometimes called in this case "idle space." He utilized this as a means for adjusting his grading apertures endwise of the machine, which was an added function but did not detract from the other function just before mentioned of controlling the sizes independently, and his idle space was in this case closed with a stick, or, I should say, two sticks overlapping, to permit the apertures being adjusted to and from each other. The fact of their being overlapping, however, had nothing to do with their functions so far as the grading apertures were concerned. Apparently, then, when he undertook to remodel or reconstruct this machine after it had been declared an infringement of the Strain reissue patent, he thought at first to abandon this nongrading or idle space for, as the machines were first constructed, there was grading space the entire length of the roller. But finding that the machine could not be a success [137]

(Testimony of Fred Stebler.)

constructed in this manner, for the reasons that I have previously pointed out, then the stick was again adopted closing or blocking out a portion of this grading space as in his prior machine and still in use. And, as I have before stated, while the stick was not used in all cases, its equivalent was used in the conical roller or by making the grading roller, or a portion of it, of such increased diameter as to close the grading aperture or a large portion of it in such manner as to make a large portion of each grading aperture idle or nongrading space. In this respect, then, it was practically equivalent to his first type of machine, which has been declared an infrinement of the Strain reissue patent.

Q. 113. Directing now your attention, Mr. Stebler, to the question of the rotation of the rolls in these two new types of machines at the Riverside Heights Orange Growers' Association, what have you to say as compared with the device of the Strain reissue patent of the manner of rotating the roller set of such graders?

A. Well, in each case the rollers are now power driven, and they rotate in the same way with respect to the traveling belt, the only difference being that in the Strain reissue patent each section of the roller is driven from a common shaft by means of a belt, whereas in the new type of Parker grader, as used in the Riverside Heights packing-house, the rollers are driven all from one end. But the effect is practically the same for the reason that in both the Strain reissue patent and this new Parker ma-

chine the rollers are driven continuously and in unison. That is, I mean to say by "in unison," that in the Strain grader each section of the roller making up the gradeway is continuously driven, and each section of the roller in the new Parker grader is continuously driven.

Q. 114. Does the manner of driving the roller side of these new Parker graders differ in function or effect in any manner from **[138]** the manner of driving of the roller side of the grader in the Strain reissue patent, and, if so, state in what.

A. No, sir; not so far as the function of the roller is concerned with respect to grading the fruit.

Q. 115. You originally manufactured the California grader under the Ish patent, did you?

A. We have made a very few of those machines.

Q. 116. What sizes or lengths?

A. Usually in what is called the double grader, but never more than 12 feet long.

Q. 117. And how was the roller side constructed?

A. The roller side was constructed of a graduated roller, or a roller diminishing in diameter from the feed end toward the discharge end of the grader, and this roller was usually built in the 12-foot machine in three sections, each section having from two to four different diameters, making a corresponding number of increased grading apertures.

Q. 118. In any of such machines was there any possibility of securing independent or individual adjustment of the grading apertures?

A. None whatever.

(Testimony of Fred Stebler.)

Q. 119. Your attention was directed to a certain machine yesterday at Rialto, the said machine being against the west wall of the packing-house where we visited such packing-house at Rialto. What have you to say with respect to the time when such machine was built and constructed, and with respect to the possibility of securing independent or individual adjustment of the different grades by such construction?

A. To the best of my recollection that machine was built by themselves either in the latter part of 1904 or early in 1905, but at no time to my knowledge has it ever been possible to secure **[139]** anything like an independent adjustment of any adjacent sizes on that machine, although for each size they have a separate section of roller. That is to say, to distinguish between my description of the machines as I build them with more than one section or grade opening to each section of roller, they had and still have one section of roller for each size or each grading aperture. Yet with this I cannot see how it is possible for them to materially adjust one size or attempt to regulate or control one size in that machine without materially affecting the adjacent size, for the reason that in that case the rollers are not of a uniform diameter the length of the machine, but still a stepped or graduated roller, which construction gives them a practically parallel grade aperture. What I mean by "parallel grading aperture," is that the grading aperture is practi-

cally of a uniform width at each end of the roller for any given aperture. With this construction then they eliminate to a considerable degree the objection of getting two sizes in any given bin. This result comes more particularly and pronouncedly in a diverging or increasing grading aperture, which they have not got. But they do get, however, with the parallel or grading aperture of uniform width, the size of fruit coming out practically the whole length of this grading aperture. Of course, this grading aperture being stepped, or increasing abruptly, they get the largest per cent in any given grade at the end of the aperture next to the intake, which has the effect of filling the bin in that end first. But they do get some fruit through this aperture its entire length and eventually if the bin is filled they can use two packers on any given bin without meeting the objections referred to of having one box too full and another box not full enough.

Q. 120. Prior to the purchase by you in 1902 of Thomas Strain's invention covered by reissue patent in suit, had you ever seen **[140]** or heard of such construction of grader as illustrated in this machine at the Rialto packing-house?

A. No, sir.

Q. 121. At the time that the machine at the Rialto packing-house was built by said company, what type of grader was your firm manufacturing?

A. Principally the machine shown in the Strain

(Testimony of Fred Stebler.)

reissue patent. We may have been making at that time now and then a California grader, but as the Strain machine came to be known, no one cared for the California grader.

Q. 122. You were manufacturing such Strain machines under both the Strain reissue patent and the Ish patent, were you?

A. Yes, sir; and we so marked them.

Q. 123. Again referring to the two types of machines examined by the Special Master and ourselves yesterday at the Riverside Heights Orange Growers' Association, at which point of the individual roller sections was the fruit discharge or the grading aperture formed?

A. In the case of the machine with the straight or uniform diameter roller, the grading aperture was at the small end of the aperture or the end next the intake. In the case of the machine with the conical roller, it was at the large end of the aperture or the same end next to the intake. In either case this was the only aperture or point of egress the fruit had.

Q. 124. What did the balance of the runway formed by the other portions of the roll and the belt perform?

A. It performed only a carrying or nongrading space.

Q. 125. And in this respect, corresponding to that portion of the machine of the Complainant's Exhibit Parker Patent, formed **[141]** by the overlapping guide arms?

(Testimony of Fred Stebler.)

A. Exactly so, so far as the nongrading space is concerned.

Q. 126. And so far as any grading effect is concerned.

Mr. LYON.—I think that is all.

Cross-examination.

(By Mr. ACKER.)

Q. 127. The California grader which we examined yesterday at the Rialto packing-house was a licensed grader under the Ish patent and the license granted by you, was it not? A. I think so.

Q. 128. What license fee was paid to you by the Rialto Company for the use of that California grader?

A. I think they had two machines of that character at that time, and they paid me $25 each or $50 for the two.

Q. 129. That is, a $25 license fee for each machine?

A. Yes, sir.

Q. 130. Please state in what lengths the California sizers were built as used in this market in the various packing-houses.

A. Prior to that time most of them were only 8 feet, and I think subsequent to the advent of the Strain grader they were made 12 feet.

Q. 131. Were they ever made 34 feet?

A. Not prior to the advent of the Strain patent.

Q. 132. At any time prior to the decree?

A. Well, this is one instance where they were made longer.

(Testimony of Fred Stebler.)

Q. 133. How many other instances?

A. I don't know. I never made any other.

Q. 134. Not as to yourself, but as used by the packers in the various packing-houses. **[142]**

A. I cannot answer for all of them. I recall one instance where there is a machine still in use in Orange of a similar character to the one that we saw at Rialto yesterday.

Q. 135. You placed on the market, as I understand from your testimony, the California sizer consisting of a plurality of rollers connected end to end and driven in unison, did you not?

A. No, sir; not other than I have just heretofore testified to.

Q. 136. I say, according to your testimony there was a plurality of rollers connected and in unison—

Q. Well, I don't know as I care to express it as a plurality. I did say we had a roller in three sections.

Q. 137. That is, you made one size with the runway consisting of a rotating member divided into three sections, and each section connected to the end of the adjacent rollers or sections.

A. That is true.

Q. 138. Did that not comprise, then a rotating way or member consisting of a plurality of roller sections?

A. Well, you may think so, and it may be true. I don't know that I would care to go on record and so state positively.

Q. 139. Didn't the California grader as placed on

(Testimony of Fred Stebler.)

the market by you comprise a grader one member of which consisted of a rotating structure composed of a plurality of units connected one to the other so as to be driven in unison?

Mr. LYON.—We object to the question as not cross-examination and as entirely threshed out in the previous hearing of this case and not an open question at this time.

The MASTER.—The objection is overruled.

Mr. LYON.—Exception.

A. Well, that is the same question as the previous one, in a different form, using the word "plurality."

Q. 140. (By Mr. ACKER.) You have in your possession, have you not **[143]** an exhibit which was introduced in this case in the hearing before his Honor, Judge Wellborn, and likewise used in the Circuit Court of Appeals, disclosing a California grader composed of more than one section?

A. Yes, sir.

Q. 141. I will ask you to produce that exhibit so that His Honor may fully understand that.

A. I will. I can have it brought down here in twenty minutes.

Q. 142. What difference in function or effect exists in the manner of driving the rotating wall member of the California grader, as examined by you yesterday at Rialto, and in the driving of the rolls of the New Parker grader, as examined by you yesterday at the Riverside Heights Orange Growers' Association packing-house, and likewise as ex-

(Testimony of Fred Stebler.)

amined by you at the Pasadena packing-house as testified to? A. No material difference.

Q. 143. In each case they are driven in the same manner? A. Practically so.

Q. 144. What do you mean by "practicallly so"?

A. Well, let it be understood first of all that in neither case have I disconnected these members or dismembered them to look into the details to see how they are driven or connected together.

Q. 145. Your examination of the Parker device, so far as relates to the drive mechanism, or how the rollers were operated, was coextensive with your examination into the device for the other purposes in the case?

A. What I mean to say is that my examination has only been cursory and not in detail. Apparently, though, they are driven from one end.

Q. 146. Your knowledge of these devices and the manner in which they operate is sufficient for you to state positively from your **[144]** examination of the machines yesterday, is it not?

A. I don't quite get the drift of your inquiry. Please read the question again. As I understand you, your question calls for a detailed answer.

Q. 147. No. I have no desire for you to go into the details of the mechanism.

A. I have stated that in each case the rollers appear to be driven all from one end.

Q. 148. Is it not a fact that the new Parker machine differs from the machine of the Strain patent to the extent that in the Strain device the

(Testimony of Fred Stebler.)

rollers of the gradeway are absolutely and independently adjustable with relation to each other whereas in the Parker device such independent adjustability is not practicable?

A. Yes; taking the rollers in the broad sense, that is true. But in the results accomplished by the two machines in comparison, it is not true.

Q. 149. Please examine the document which I now hand you, and state whether that is you signature. A. It appears to be; yes, sir.

Q. 150. Was that letter written by you to the Villa Park Orchard Association?

A. It appears to be.

Q. 151. And what machine had you reference to in connection with that letter when referring to the Parker machine?

A. I will read it and see. (After examining letter.) Well, I had reference to machines in general, and, of course, to the grader in particular.

Q. 152. You mean the new grader of Mr. Parker in particular? A. Apparently so.

Q. 153. In that letter you refer to a suit pending against Mr. Parker. Had you reference by the mention of this suit in said [145] letter to Equity Suit No. A–92 then pending in the District Court of the United States for the Southern District of California, entitled Fred Stebler vs. George D. Parker and Pasadena Orange Growers' Association?

A. I do not find where any mention is made with reference to any in suit in particular. It does not

(Testimony of Fred Stebler.)

say here "I suppose you are aware of the fact that the machines Mr. Parker is building are in controversy." That is all the reference I find to any suit. Without reading the letter through, I do not find any such reference.

Q. 154. Had you any other suit against Mr. Parker and undetermined on March 11, 1914, than Equity Suit A–92, relating to infringement of grader patents?

Mr. LYON.—Objected to as calling for a conclusion of the witness, unless you define what you mean by the term "undetermined." I will have to insist on the objection that it is not the best evidence.

The MASTER.—The objection is sustained.

Q. 155. (By Mr. ACKER.) I will modify the question to the extent of substituting for the word "undetermined" the word "undecided."

Mr. LYON.—That is subject to the same objection.

The MASTER.—The objection is sustained.

Q. 156. (By Mr. ACKER.) What undecided suit had you pending in the United States District Court for infringement of grader patents that had not been decided, other than Equity Suit No. A–92?

Mr. LYON.—The same objection. I am willing to state what suits were pending against Mr. Parker on the record here, for convenience, if you wish it. But this witness should not be asked to give his conclusion as to whether a suit is decided or is not decided.

(Testimony of Fred Stebler.)

The MASTER.—The objection is sustained. I think that you can prove what suits were pending.

Q. 157. (By Mr. ACKER.) What suits were pending at the time of the **[146]** writing of this letter of March 11, 1914, brought by yourself against Mr. Parker for infringement of the grader patents?

A. This present hearing and the suit on the Thomas Strain patent.

Mr. LYON.—And one under injunction, No. A–90. One suit is brought against George D. Parker. That is included in that list of suits.

Mr. ACKER.—I have no knowledge of that.

Mr. LYON.—You will find it in the list.

Mr. ACKER.—I offer this letter in evidence and ask that it be marked Defendant's Exhibit No. 8.

(Said letter so offered in evidence is marked as requested.)

Q. 158. (By Mr. ACKER.) Mr. Stebler I will ask you to examine Defendant's Exhibit 7 and state whether or not the patented device therein disclosed is incorporated in the machine as placed on the market by you at this time.

Mr. LYON.—Objected to as not cross-examination.

The MASTER.—The objection is overruled.

Mr. LYON.—Exception.

A. It is.

Q. 159. (By Mr. ACKER.) Please state, Mr. Stebler, what features of the Strain grader were old and on the market at the date of said patent,

(Testimony of Fred Stebler.)

with the exception of the rotating wall member of the said grader.

Mr. LYON.—We object to that on the ground that it is *res adjudicata* in this case and not cross-examination and incompetent.

Mr. ACKER.—Not *res adjudicata* so far as relates to what was old in the grader business. It is *res adjudicata* so far as relates to the invention of the claims involved in suit.

The MASTER.—The objection is sustained. [147]

Mr. ACKER.—An exception is noted.

Q. 160. Please state whether the fixed or nonmovable member of the grader runway of the Strain patent in suit was in use in fruit graders prior to the date of the Strain patent.

Mr. LYON.—The same objection.

The MASTER.—The same ruling. Answer the question subject to the objection.

Mr. ACKER.—Note an exception.

A. It was.

Q. 161. Was that fixed or nonmovable member of the grade runway a grooved one?

Mr. LYON.—The same objection, and the further objection that it has been fully gone over in the record and it is admitted that that particular element was old.

The MASTER.—The same ruling.

Mr. ACKER.—An exception is noted.

The MASTER.—Answer the question subject to the objection.

(Testimony of Fred Stebler.)

A. It was usually grooved.

Q. 162. (By Mr. ACKER.) How does the propelling medium of the Strain reissue patent in suit compare with the propelling medium employed in the fruit runway of the prior graders?

Mr. LYON.—The same objection.

The MASTER.—The same ruling.

Mr. ACKER.—An exception is noted.

The MASTER.—Answer the question subject to the objection.

A. In effect they are substantially the same.

Q. 163. Is it not a fact that the difference between the California grader and the grader of the reissue patent in suit resides in the construction of the rotary wall member of the Strain patent in suit?

Mr. LYON.—Objected to as calling for a conclusion of the witness and as having been fully determined in the prior hearing in this [148] case, and *res adjudicata* between the parties, and not cross-examination.

The MASTER.—The objection is sustained. Answer the question subject to the objection.

Mr. ACKER.—An exception is noted.

A. Practically so.

Q. 164. In what manner does the form of mounting the rollers of the new Parker grader and the manner of driving or rotating the same and the manner of adjusting said rollers differ from the form of mounting and the form of adjustment and the manner of driving the rolls of the machine which you examined in the Pasadena packing-house and which you have re-

(Testimony of Fred Stebler.)

ferred to in your testimony here?

Mr. LYON.—Do you mean first examination or second?

Mr. ACKER.—The first examination. And I may state as referred to in the affidavit filed by you in connection with Equity Suit A-92, Stebler vs. Parker et al.

Mr. LYON.—Submit the affidavit to him.

A. I can answer the question except with reference to the affidavit.

The MASTER.—It is the Pasadena Orange Growers as compared with this one at Riverside. How do they differ? The affidavit has nothing to do with it.

A. He has got the California grader involved that we saw at Rialto.

The MASTER.—No; he asked with reference to the Pasadena one, with reference to the method of its being operated and driven as compared to the one at Riverside.

A. The first two machines reconstructed at the Riverside Orange Growers' Association appear to be practically the same as those first installed at the packing-house of the Pasadena Orange Growers' Association. They are practically the same. Both have [149] straight rollers. The manner of mounting and driving them appears to be practically the same.

[Testimony of George D. Parker, for Defendant (Recalled).]

GEORGE D. PARKER, recalled on behalf of defendant testified as follows:

Direct Examination.

(By Mr. ACKER.)

Q. 210. You heard the testimony given this morning by Mr. Stebler relative to your new grader, and the comparison made by Mr. Stebler between your new grader and the grader of the Strain reissue patent in suit, did you not? A. Yes.

Q. 211. What have you to say in regard to said statement and please state whether you agree with Mr. Stebler. If not, wherein you differ from him, and your reasons therefor.

A. I do not agree with him. The sizer we are building is the same as the old California sizers. It operates in the same manner and does the same work. There is no independent adjustment of the rolls. The rolls in this sizer being rotated one through the other, having a common bearing for the two adjacent rolls, any adjustment of this bearing necessarily affects both rollers the same as the California grader. In the old California sizer composed of one traveling member for carrying fruit, the opposing member being a plurality of rotated rolls. These common bearings being adjusted to and from the rope or belt to vary the size of the grade opening being entirely similar to the ones we are placing on the market at the present time, and they are not independently adjustable. In the Strain patent the feature [150]

(Testimony of George D. Parker.)

different from the California sizer resides only in the addition of one additional bearing member, each roller having two bearings so that it can be adjusted back and forth entirely independent of the adjacent roller, this being the only difference between the Strain reissue patent and the former California machines having the common bearing for the ends of the two rollers. Mr. Stebler has stated that in our sizer we have an independent adjustment. This is not correct, and cannot be so under the construction. If you vary the bearing either way you must necessarily move or adjust both rolls that are connected to that bearing, as both ends of the two adjacent rolls are moved together, and this will vary the gradeway of both rolls.

Q. 212. Please state how the new Parker grader compares in function, effect, operation and construction with the California grader situated and in use at the Rialto packing-house, and which we examined yesterday, and as illustrated by Defendant's Exhibit Photo Exhibits 3, 4 and 5.

Mr. LYON.—Objected to as incompetent and inadmissible under the decree in this case, the said matter being *res adjudicata,* and upon the further ground that it appears from the testimony in this case that the said Rialto grader is not a part of the prior art, but built years after the invention by Thomas Strain, the subject matter of the reissue patent in suit, and, therefore, irrelevant, immaterial and incompetent for any purpose in the case.

The MASTER.—The objection is overruled.

(Testimony of George D. Parker.)

Mr. LYON.—Note an exception.

A. They are absolutely the same in general function, operation and construction.

Q. 213. (By Mr. ACKER.) Please state how the union of one roll to the other in the rollers of the new Parker grader compare with [151] the union between the respective rollers of the California grader, as disclosed by said photograph exhibits and as examined by you yesterday at the Rialto packing-house.

Mr. LYON.—The same objection is noted as to the last question.

The MASTER.—The same ruling.

Mr. LYON.—Note an exception.

A. They are practically the same, one bearing between the ends of the two adjacent rollers and the pin or shaft rotating both rolls in unison, the driving of the upper roll or first roll in the series by means of the pin rotating the second roller and revolved throughout the entire line of rollers.

Q. 214. (By Mr. ACKER.) Please state whether in either the California grader, as exemplified by the said photograph exhibits, and the Parker new grader, whether there would be rotation of the connected rollers of the grade runway if the power was removed from the end of the first roller which drives the series, and, by "rotation" I mean frictional contact of fruit as passed through said runway.

Mr. LYON.—The same objection, and the further objection that it is irrelevant and immaterial.

The MASTER.—The objection is overuled.

Mr. LYON.—Note an exception.

(Testimony of George D. Parker.)

A. The rolls unless power driven would not revolve.

Q. 215. (By Mr. ACKER.) Would it be possible to grade the fruit through the utilization of the roller grader if the rollers are not rotated?

Mr. LYON.—Same objection.

The MASTER.—The same ruling.

Mr. LYON.—Note an exception.

A. No, sir.

Q. 216. (By Mr. ACKER.) Please state at the time of your advent [152] into the art as a manufacturer of grading machinery for fruit, what class or types of devices were open to you to construct, built, and place on the market for the grading of fruit?

Mr. LYON.—Objected to as *res adjudicata,* incompetent and not the best evidence, calling for a conclusion of the witness as to a question of law.

The MASTER.—The objection is sustained, because he states at the time he first went into the grading business. That has been *res adjudicata.* The question that I understand you to present is, at the time he made these new machines, what was open for him to use.

Q. 217. (By Mr. ACKER.) I will put it in a different form. Please state what form of grader or grading machinery for the grading of fruit was open to you to manufacture and place on the market at the time you commenced the building of your new grader.

Mr. LYON.—Objected to as *res adjudicata* in this

(Testimony of George D. Parker.)

case, and on the further ground that it is incompetent, calling for the conclusion of the witness, no foundation laid, not the best evidence, not the proper method of proof, and not admissible under the pleadings.

The MASTER.—The objection is overuled.

Mr. LYON.—Note an exception.

A. There was open to me and to the general public as well, several types of graders, one of which was the California grader, which grader was a sizer composed of a belt or rope running in a groove for one side of the common member, and a series of rotated rolls as an opposing member, forming a runway for the fruit in the grader. This was commonly known as the California type of sizer, and had formerly been constructed under the Ish patent. These Ish patents were the pioneer patents in the sizers having a rope or belt for carrying the fruit and a roller as the opposing side. This patent covered all types of rope-and-roller graders. [153] The Strain patent was an infringement of the Ish patent in so far as that rope-and-roller feature is concerned. And until the outlawing of the Ish patent, or California sizer, no one could have made a rope-and-roller sizer, the Ish patent being the pioneer and controlling all others. The Strain patent differed from the California patent—

Q. 218. (By Mr. ACKER.) You need not go into that. The Court has passed on those. I am asking you what form of devices were open to you for the manufacture and sale at the time you commenced

(Testimony of George D. Parker.)

the placing of the new grader on the market.

Mr. LYON.—The same objection.

The MASTER.—The same ruling.

Mr. LYON.—Exception.

A. The California sizer.

Q. 219. (By Mr. ACKER.) Please describe the various forms of California sizer which were on the market and in public use in the packing-houses in the Southern District of California at the time you commenced the manufacture and sale of this new type of grader, stating the time you commenced the manufacture and sale of such new type of grader.

Mr. LYON.—The same objection as last noted, and as not involving the correct rule of law, for the reason that what the witness may term the California type of sizer may or may not have been open, inasmuch as such date was years subsequent to the invention of Thomas Strain and the issue of the Strain reissue patent in suit. In this connection we insist that no prior art other than that which has been shown to the Court and pleaded in the original answer and considered upon the decision upon which the interlocutory decre is based, is admissible before the Master in this connection, and that the scope of the Strain invention is *res adjudicata* and must be determined upon the record made in this [154] case and upon the decision of the Court of Appeals in this case.

The MASTER.—I agree with you as to the scope of the Strain patent—that that is not in issue here at all. Counsel has referred to new appliances that

have been made by Mr. Parker since the entry of the decree in this case, and as to whether or not they are infringements or modeled after some design of a patent which has expired.

Mr. LYON.—That comparison under our contention must be made with the prior art as shown in the original record, and any comparison of such prior art is not objected to. But any addition is objected to on the ground that it is not pleaded, inadmissible and *res adjudicata.*

The MASTER.—The objection is overuled.

Mr. LYON.—Exception.

A. I commenced the manufacture and sale of the new type in 1913, in March.

Q. 220. (By the MASTER.) Now, proceed. What was on the market at that time? State the types of California graders that were on the market at that time.

A. There were a number of California sizers in which the rolls were end to end, having a common bearing, and a rope or traveling member for carrying the fruit through the runway. Practically only one type of California sizer.

Q. 221. (By Mr. ACKER.) Please examine the photographs before you and state whether they represent one of the forms of California sizer in the market at the time you entered on your manufacture of the new type of grader.

Mr. LYON.—Objected to on each of the grounds stated in the last objection.

The MASTER.—The same ruling.

(Testimony of George D. Parker.)

Mr. LYON.—Exception. [155]

A. Yes, sir.

Q. 222. (By Mr. ACKER.) When did you enter the field as a manufacturer of the fruit grader held to be an infringement in the present suit?

A. In 1909.

Q. 223. What part of the year 1909?

A. In the latter part—September or October.

Q. 224. How does the construction of the new machine which we examined yesterday at Riverside Heights packing-house differ, if at all, so far as relates to mounting, the manner of adjustment of the rollers, the matter of uniting the rollers one to the other, and the manner of driving the rolls, from the mounting of the rollers and the adjustability of the rollers and the manner of driving the rollers that were installed by you at the Pasadena packing-house.

A. In the machines of the type manufactured between 1909 and 1913, one of which was in the Riverside Heights in their Seventh Street house, was composed of a unit adjustable longitudinally of the runway but was not power driven.

Q. 225. I am afraid you do not understand the question. You heard the testimony of Mr. Stebler this morning, did you not, as to the new type of grader installed by you at the Pasadena packing-house? A. Yes.

Q. 226. What I wish to ascertain from you is whether or not the form of mounting rollers for adjustability and the form of connecting the rollers one

(Testimony of George D. Parker.)

to the other, and the manner of driving the rollers in the new grader in the Riverside Heights packing-house differed in any manner from the form of connecting the rollers in the Pasadena packing-house.

A. None whatever. [156]

Q. 227. Are you prepared to manufacture and sell the fruit graders without the adjustable bins?

Mr. LYON.—Objected to as leading, irrelevant and immaterial.

The MASTER.—I don't understand what you mean by adjustable bins.

Mr. ACKER.—The adjustable bin installation and the material which enters into those is the matter referred to in the second sheet of Mr. Stebler's statement, and is also the matter referred to by Mr. Parker in the separate schedule or statement on the grader member and is the part referred to in one statement of the schedule of Mr. Parker and referred to in one of the schedules or sheets of Mr. Stebler. Now, I wish to ascertain from this witness whether he was equipped or prepared to manufacture that grader as a grader without the adjustable bin installation.

The MASTER.—I don't understand the question that way.

Mr. LYON.—The same objection. The question here is not what he is prepared to do but what he did.

The MASTER.—The objection is sustained. Answer the question subject to the objection.

(Testimony of George D. Parker.)

Mr. ACKER.—An exception is noted.

A. Yes, sir.

Q. 228. (By Mr. ACKER.) What would have been your selling price for a fruit grader without the matter called for by the adjustable bin units?

Mr. LYON.—The same objection.

The MASTER.—Overuled.

Mr. LYON.—Exception.

A. $175.

Mr. ACKER.—That is all.

The MASTER.—Cross-examine. [157]

Cross-examination.

(By Mr. LYON.)

Q. 229. Did you ever at any time sell a grader without the bins in California? A. No, sir.

Q. 230. Referring now to the new type of grader that you installed in the Pasadena Orange Growers' packing-house at Pasadena, California, that was first provided with leaves or trap-doors and adjusting devices so that the grade opening formed between the belt resting on these leaves or trap-doors and the roller could be varied by transverse adjustment independent for each opening, was it?

Mr. ACKER.—The question is objected to on the ground that the record in connection with the said suit A–92 pending in the District Court for the Southern District of California, shows that no fruit grader was ever installed by this witness in the Pasadena packing-house in accordance with that defined in the last question.

The MASTER.—I do not understand that there is

(Testimony of George D. Parker.)

any decree or anything like that.

Mr. ACKER.—There has been no hearing on that case. As the affidavits in the case show, there was no sale or installation of a device of that construction.

The MASTER.—As I understand, the affidavits may show it, but there has been no determination by the Court.

Mr. ACKER.—There has been no determination or hearing one way or the other?

The MASTER.—Answer the question.

Mr. ACKER.—Exception.

A. During the construction of this machine, in an experimental way we put on adjustments to the rolls and also had an opening in the bottom, but we found the opening in the bottom was of no value. [158]

Q. 231. (By Mr. LYON.) You were installing two of such machines in the Pasadena Orange Growers' packing-house at the time that this suit by Mr. Stebler against you, No. A–92, was brought?

A. We were installing; yes.

Q. 232. And you then abandoned the use of such trap-door or leaf construction and nailed those up on those machines?

A. We found that they were inoperative.

Q. 233. You nailed them up after the bringing of the suit?

A. Before the completion of the machine we found that it was not of any value whatever.

Q. 234. But it was after the bringing of the suit and service of papers that you did that?

(Testimony of George D. Parker.)

A. Yes, sir; and before the completion of the machine.

Q. 235. Now, what was the next step that you took on that machine? The putting in of the sticks to block out part of the rolls?

A. The door was there—

The MASTER.—He asks whether the sticks was the next step you took to block out the rolls?

A. I am not sure whether the sticks were there or not. They may have been.

Q. 236. (By Mr. LYON.) And for what purpose do you use those sticks in that machine and in the machine at the Riverside Heights Orange Growers' Association packing-house, the one to which the attention of the Master was directed yesterday afternoon, and which sticks block out all of the lower half or more of each roller portion from forming a grade opening?

Q. 237. (By the MASTER.) What is the purpose of those sticks in that grader at the Riverside Heights Association packing-house?

A. To make a distinction between the sizes.

Q. 238. (By Mr. LYON.) In other words, to block off the portion [159] of the roll and runway covered by such stick from forming any portion of the grade opening. Is that it?

A. There is practically one-eighth of an inch difference in the size of the oranges.

Q. 239. (The MASTER.) It is to prevent those oranges of that size going through the rolls at the

(Testimony of George D. Parker.)
lower end? Is that it?

A. The roller must be practically parallel with the runway in that size.

Q. 240. (By Mr. LYON.) Re-read the question to the witness and see if he can give an answer. Add this to the record. I wish to afford the witness the fullest opportunity to explain the use of these devices in said machine. (The question is read.)

A. Yes, sir.

Q. 241. And the purpose of using the tapered roll in the other machine to which the Master's attention was directed yesterday afternoon at the Riverside Heights Orange Growers' Association packing-house at Riverside, with the large ends of the rolls away from the receiving portion of the machine, was for the same purpose as these sticks, and to permit the line of the roll to be parallel when adjusted? That is, parallel to the belting used?

A. I can answer that best by explaining the action of the fruit—

Q. 242. Please answer the question, and then make any explanation you may desire. I desire to afford you the most full opportunity to explain this.

A. It is to make the opening between the belt and the roller parallel. In the manufacturing proposition uniformity of units is to be desired. In the operation of the sizer 95 per cent of the fruit—Suppose two parallel lines or rolls composing the sizer, one being an eighth of an inch further away from the belt than the other. As the fruit would leave one roller and [160] pass to the next roller,

(Testimony of George D. Parker.)

an eighth of an inch further away, 95 per cent of the fruit would drop at the end of the roller in the first, probable, three or four inches. But with a parallel opening the rest of the way, there would be no fruit dropped till it came to the next offset of an eighth of an inch.

Q. 243. What is the difference in diameter of these tapered rolls, comparing the diameters of the small end and the diameters of the large end?

A. I think about three-eights of an inch. From a quarter to three-eights of an inch.

Q. 244. Are these diameters varying as you progress along the runway? In other words, are the tapered rolls of the same size or are they of different sizes progressively?

A. They are all uniform in size.

Mr. LYON.—That is all.

Redirect Examination.

(By Mr. ACKER.)

Q. 245. Whatever purpose these filler sticks referred to may have been employed for, please state whether or not in changing the adjustment of one roller whether you vary the grading aperture of the adjacent roller.

Mr. LYON.—Objected to as leading.

The MASTER.—The objection is overruled.

A. They are affected in the same manner. Any adjustment of one roller affects the one adjacent to it.

Mr. ACKER.—That is all.

(Testimony of George D. Parker.)

Recross-examination.

(By Mr. LYON.)

Q. 246. It does not affect the whole of the adjacent roller, but only affects the end toward the one which has been adjusted? Is that correct? **[161]**

A. No, sir; it is not correct.

Q. 247. How can a roller, one end of which is on a fixed pivot, be materially affected by the adjustment of the other end two or three feet away, and an adjustment of not more than an eighth of an inch?

A. I think our demonstration yesterday showed that it did.

Q. 248. What is the length of those rollers in the machine? A. About three feet.

Mr. LYON.—That is all.

Redirect Examination.

(By Mr. ACKER.)

Q. 249. What was the length of the rolls on the California grader at the Rialto packing-house?

Mr. LYON.—The same objection is noted as in the objection to the several questions asked this witness in regard to the said alleged California grader.

The MASTER.—The objection is overruled.

Mr. LYON.—Exception.

A. From 3 feet to 42 inches.

Q. 250. (By Mr. ACKER.) Would a change in the adjustment of one roller in that California sizer vary the grade aperture of the adjacent roller in the same manner as would occur in the new Parker

(Testimony of George D. Parker.)

grader at the Riverside house which we examined yesterday, the change being made in the adjustment of one roller?

Mr. LYON.—Objected to as calling for a conclusion of the witness and as leading.

The MASTER.—The objection is sustained.

Mr. ACKER.—An exception is noted.

The MASTER.—Do you want it answered?

Mr. ACKER.—Yes.

The MASTER.—Answer the question subject to the objection.

A. Yes, sir. **[162]**

GEORGE D. PARKER, recalled for continuation of complainant's direct examination:

Direct Examination (Continued).

(By Mr. LYON.)

Q. 251. In your statement first filed herein you have referred to an item of $848.98, advertising. That is your general advertising expense for advertising all of your products during the time from September 30, 1909, to March 10, 1913? A. Yes.

Q. 252. And you were during that time manufacturing and advertising a full line of packing-house machinery and box-nailing machines, etc., were you?

A. Yes.

Q. 253. Is there any way that you can segregate for us the proportion of that advertising which was exclusively for the promotion of the sale of these infringing graders, or was such advertising done as a whole and so commingled as to be impossible to

(Testimony of George D. Parker.)

properly and definitely segregate what portion was for each?

A. I should think it would just take its just proportion relative to the sales made.

Q. 254. There is no way that you could segregate it by the amount of advertising, or the amount of actual expense?

A. I don't think so, at this time.

Q. 255. In this statement you have an item of $425.32. Is that depreciation on machinery?

A. Depreciation on machinery 10 per cent. The stenographer evidently has made a mistake in carrying out the interest. He put $121.52 instead of $12,152.04. Ten per cent of that would amount to $1,215.20. **[163]**

Q. 256. This machinery upon which you have so figured a depreciation includes the machinery used by you in the manufacturing of these automatic box machines? A. Yes, sir.

Q. 257. Do you use all of that machinery in the manufacture of fruit graders? A. Yes.

Q. 258. What is the item "machinery up-keep $1,486.14." in this account?

A. That was the repairing of break-downs.

Q. 259. That would be part of the natural up-keep of your machinery, would it? A. Yes.

Q. 260. In the statement filed by you of overhead expense from April 1, 1913, to July 1, 1914, you have an item there of interest, $651.20. What is that interest? A. For money borrowed.

Q. 261. And the item of $921.59 in this last state-

(Testimony of George D. Parker.)

ment—depreciation—is figured upon the same basis as the item of $425.32 in statement F of the first report, is it? A. No, sir.

Q. 262. Not on the same basis?

A. On the same basis, but not on the same amount.

Q. 263. I understand that, but not on the same basis. Then what is the item of "machinery up-keep" in this former expense report of April 1, 1913, to July 1, 1914, $347.49? Is that machinery repairs during that time? A. No, sir. **[164]**

Q. 264. That is part of the up-keep of the machinery, is it? A. Yes.

Q. 265. The figures of 10 per cent depreciation is an estimate which you have made upon the basis of ten per cent?

A. It is less than is ordinarily struck off for machinery of this class.

Mr. LYON.—We move to strike the answer out as not responsive and ask that the question be re-read to the witness.

The MASTER.—The motion will be granted, but you can explain.

A. Yes.

The MASTER.—Do you wish to explain?

A. It is ordinarily considered that machinery or the natural life of machinery of that type will depreciate and also be out of date within ten years.

The MASTER.—Equal to or more than 10 per cent?

A. Ten per cent. Some folks use as high as 25

in their depreciation. The packing-houses around the country use 25.

Q. 266. (By Mr. LYON.) In the same statement of April 1, 1913, to July 1, 1914, appears the item "Stockroom and drayage $1,037.85." Of what is that item made up?

A. That includes the salary of the man in the stockroom and the transfer of material from the freight depots to the shop and from the shop to the railroads or anywhere else around town.

Q. 267. And includes the drayage and stockroom expense of your total business? A. Yes.

Q. 268. Is there any way of segregating that by your books or in any other manner so as to be limited to the manufacture and sale of the new type graders, from April 1, 1913, to July 1, 1914, alone?
[165]

A. No; I think not.

Q. 269. The item "shop expense" (foreman) $1,359.19, is the salary of your shop foreman?

A. Yes, sir.

Q. 270. And he is shop foreman of your whole business?

A. No, sir. He takes care of the machinery of the machine-shop and wood-working shop.

Q. 271. And that machine-shop, I believe you have stated, was used in the manufacture of your automatic box-nailing machines and other devices, as well as the graders? A. Yes.

Q. 272. And is there any way of segregating what proportion of his expense is necessarily charged to

(Testimony of George D. Parker.)

the grader account simply and what is properly chargeable to the rest of your business?

A. I should say it should take its just proportion.

Q. 272. And is there any way of fixing from your books that proportion? A. Yes.

Q. 274. How? A. By the amount of sales.

Q. 275. I will ask you to make an examination of such books and before we adjourn to-day answer the question as to what proportion is chargeable solely to this grader account of that item.

Mr. ACKER.—The last request is objected to because under the law controlling an accounting, where either a defendant or the complainant is engaged in a general line of business of which the infringing article constitutes only one portion thereof, the entire gross expense of the running of the business is always required to be given and the Master will then determine the proportion that the particular item in controversy bears to the total. **[166]**

The MASTER.—Are you willing to stand on your part of it and let him stand on his?

Mr. LYON.—If the defendant will assume the burden of such apportionment, yes. As to the item of this overhead expense, I am willing to take his statement.

Mr. ACKER.—We have produced in connection with our statements a statement of Overhead Expense, and that statement is left to the Master to properly apportion in accordance with the general business of the defendant. All the defendant is re-

(Testimony of George D. Parker.)

quired to give is to give the gross amount of business and the gross receipts for that amount of business, and the gross receipts of the particular item in controversy, and the Master will make the proper and just proportion as he sees fit.

The MASTER.—What I wanted to say is, you both stand on your proposition. Mr. Lyon, do you insist on their going ahead and furnishing, or are you willing to take that statement of Mr. Acker that it is the duty of the Master to apportion it? How could the Master apportion anything arbitrarily?

Mr. LYON.—I am willing to take Mr. Acker's statement providing, however, one thing, on behalf of the defendant: that is, that the defendants do on their own behalf undertake the burden of showing before the Master all such items as they desire the Master to consider upon any question of such apportionment, and I will accept the rule by stipulation as counsel states.

Mr. ACKER.—Just explain a little more clearly what you mean by the burden.

Mr. LYON.—That is the duty of the defendant, and that the defendant will produce such evidence as to the gross business done by him, or other matter in which he insists under your statement the Master shall make such apportionment. In other words, you admit that it is your duty to produce that evidence and not the duty of complaint. **[167]**

Mr. ACKER.—I propose, and have always proposed, to give you the gross amount of business done

(Testimony of George D. Parker.)

by this defendant for the entire business during the infringing period, and the gross amount received for the infringing articles. Now, it is for the Master to apportion that. The law does not require the defendant to do it. We cannot. It is a matter for the Master to do. And, strange as it may appear on a matter of this kind, the burden of nothing is assumed by the defendant; but under the law the burden is on the complainant.

The MASTER.—Then that is the understanding. That is, you have furnished certain items and you expect the Master, from those items, to figure out what the proportion is.

Mr. ACKER.—Yes; I have asked Mr. Stebler to produce the same for him.

Mr. LYON.—We will do that. We will accept your producing the proof on which to base the proportion.

Mr. ACKER.—I am producing the statement from our books.

The MASTER.—That is what I wanted to know.

Mr. ACKER.—That is what I always understood I was to do. The law requires me to do that.

Q. 276. (By Mr. LYON.) What does this item of "Office Expense $1,583.87" in this same statement of Overhead Expense from April 1, 1913, to July 1, 1914, include? The entire office expense of your business? A. Yes.

Q. 277. Any salary or personal expense of your own in that? A. No, sir.

(Testimony of George D. Parker.)

Q. 278. I will ask you the same question in regard to the item of "Office Expense $6,089.03" in Statement F of your first statement filed. What does that item include? **[168]**

A. Office expenses.

Q. 279. What office expenses?

A. That does not include anything for me.

Q. 280. Does it include any moneys at all that you yourself have used out of that business?

A. No, sir.

Q. 281. Does it include any interest on past due accounts? A. No, sir; I think not.

Q. 282. But it includes the entire office expense of your entire business during that time referred to in the statement? A. Yes.

Q. 283. When did you commence to build the first machine for the Riverside Heights Orange Growers' Association of the type held by the interlocutory decree to be an infringement of the patent in suit? Was it not in 1910? A. 1910.

Q. 284. And that was the first machine of that type that you manufactured and sold?

A. No, sir.

Q. 285. To whom did you sell a machine of that type before?

A. The Fernando Fruit Growers' Association at San Fernando.

Q. 286. And when did you commence the manufacture of that machine?

A. October or November, 1909.

(Testimony of George D. Parker.)

Mr. LYON.—That is all.

Mr. ACKER.—I suggest that we adjourn now so that Mr. Lyon and I can get together.

(An adjournment is now taken until 2 o'clock P. M. of this day at this same place.) **[169]**

[Proceedings Had August 8, 1914, 2 P. M.]

Glenwood Inn, Riverside, Cal.

August 8, 1914, 2 o'clock P. M.

This being the time and place to which the further taking of proofs in this case was continued, proceedings are now resumed.

Present: Hon. LYNN HELM, Special Master.
FREDERICK S. LYON, Esq., Solicitor for Complainant.
N. A. ACKER, Esq., Solicitor for Defendant.

Mr. LYON.—For the purpose of eliminating any necessity for calling either the complainant or defendant Parker for further testimony in regard to the respective statements of cost and expense filed by them herein, it is hereby stipulated:

[Stipulation Re Acceptance of Statement Filed by Defendant Parker, etc.]

1. Complainant accepts the two statements filed by the defendant Parker, showing the costs of manufacture, sale and installation of the complete infringing machines, both of the type manufactured under Complainant's Exhibit Parker patent and the two new types as claimed to be an infringement and submitted for the decision of the master, as correct, with

such exceptions as have heretofore been noted on the record by correction or as corrected by the testimony of the defendant Parker. This stipulation, however, not accepting the two statements of overhead expenses, which respective statements are accepted as correct in so far as the items therein set forth are set forth, but reserving all objections to the proper allowance as overhead expenses of any of the items thereto. And in this connection it is stipulated that for the purpose of comparison of the portion of overhead expense, if any, to be charged against the grader business, the gross business of the defendant Parker for the period from March, 1912, to and including March, 1913, [170] including such items as are set forth in statement F therein, amount to the sum of $8,684.59, while the gross business of said Parker during said time amounted to the sum of $83,000; that during the period of April, 1913, to and including April, 1914, the overhead expense of said defendant Parker's said business, including therein such items as are set forth in the Overhead Statement accompanying the defendant Parker's supplemental report, amounted to $7,469.45, and the defendant Parker's gross business during the said time $1,208.40. The stipulation reserving the objection to the items as to whether particular items are allowable, but not objecting to the amounts of such items. This stipulation with respect to the volume of business and the gross overhead expense for the period between March, 1912, to and including March, 1913, may be taken as an average of the overhead expense during the period covered by the first and

original statement of account filed on behalf of defendant Parker herein, and the volume of gross business per year.

2. The same stipulation in regard to the overhead expense account of complainant, and the items thereof, are agreed to and stipulated subject to the same objections as to the particular items being allowable or chargeable as overhead expense, but no objection being made to the amount of such items, such statement of overhead expense on behalf of complainant during the period of October 1, 1912, to and including October 1, 1913, being as follows: Office supplies, $256; general expense, $689.12; office and labor expense, $1,989.73; light, power and water, $334.95; taxes, $192.75; insurance, $217.85; depreciation on buildings, $7,050 at 2½ per cent, $176.25; depreciation on machinery, value, $8,049.97, at 5 per cent, $427.50. Total, $4,254.15. Gross business during said time, $95,933.21. That the sales of graders during said time amounted to $19,065, and that this is to be accepted as a general average upon which to compute [171] the proportion of overhead expense due to the greater business, such overhead expense *pro rata* to be established by the Master in accordance with the stipulation hereinbefore entered.

Mr. ACKER.—I have no further testimony to offer on behalf of the defendant.

Mr. LYON.—That is all of the testimony.

(By consent the matter is submitted on briefs to be filed by counsel for each party within two weeks, three days to each party thereafter to reply.)

I HEREBY CERTIFY the foregoing to be a full,

true and correct transcript of the testimony and proceedings taken and had in the matter of the accounting in the cause therein entitled, before Hon. Lynn Helm, Special Master.

I. BENJAMIN,
Shorthand Reporter.

[Endorsed]: C. C. 1562. U. S. District Court, Southern District of California, Southern Division. Fred Stebler, Complainant, vs. Riverside Heights Orange Growers' Assn. et al., Defendants. Proofs on Accounting. Before Hon. Lynn Helm, Special Master. Filed Aug. 11, 1914, at 30 min, past 10 o'clock A. M. Lynn Helm, Referee. C. Meade, Clerk. Filed Oct. 3, 1914. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. [172]

United States District Court, Southern District of California, Southern Division.

IN EQUITY—Cir. Ct. No. 1562.

FRED STEBLER,

Complainant,

vs.

RIVERSIDE HEIGHTS ORANGE GROWERS' ASSOCIATION and GEORGE D. PARKER,

Defendants.

Summons, Order or Subpoena.

Pursuant to the Interlocutory Decree entered and enrolled in the above-entitled suit, and in furtherance of the reference therein made for the purpose

of taking and stating an account of the profits, gains and advantages which the defendants and each of them have derived or received in or through the infringement of the letters patent sued on in said suit and found in and by said Interlocutory Decree and assessing the damages which the complainant has sustained by reason of such infringement, you, the said Riverside Heights Orange Growers' Association and George D. Parker, are hereby ordered and directed to appear and attend before me, at the hour of 10:30 A. M. on Wednesday, July 22d, 1914, at my office, Rooms 918–920 Title Insurance Building, Fifth and Spring Streets, Los Angeles, California, and to bring in and render an account or statement in writing under oath, of the number of infringing machines made, sold or used by you or either of you, in infringement of reissue letters patent No. 12,297, dated December 27th, 1904, the details of such manufacture and sale and of each of such sales, and the gains and profits or advantages made or received by you, or either of you, in, by or through the manufacture or sale or use of each of said machines; and also requiring detailed specification in such account of the [173] following items:

First. The total number of graders or sizers made, sold, or used by you, or either of you, and embraced within claim 1 or claim 10 of the said reissue patent to complainant, Number 12,297, and referred to in said Interlocutory Decree.

Second. That you specify and indicate in such statement or account each separate contract entered into by you, or either of you, for the installation of

packing-house machinery, including in such contract and as a part thereof, one or more of such infringing graders and particularly indicating in such statement or account whether such contract was as a whole for the entire equipment contracted for, or whether such contract provided as a separate item thereof, at a price specified therein, the grader or graders contracted for and furnished upon such contract.

Third. That you have with you at said time all the said contracts and vouchers in your possession referring to the manufacture, sale, or use by you, or either of you, of said infringing graders, together with all books and vouchers in your possession which show the cost of labor and materials used in making said infringing machines, especially all day-books, journals, ledgers, order books, blotters, cash-books, time cards, machine and shop records used by you or either of you during said infringing period.

This order is directed to you and each of you, your attorneys, officers, agents, servants, workmen, clerks, and associates, and each of them as may stand in any relation to you in the premises; all in accordance with said Interlocutory Decree and the powers therein and thereby conferred upon me and in accordance with rules 62 and 63 of the Rules of Practice for the Courts of Equity of the United States, promulgated by the Supreme Court [174] of the United States November 4th, 1912, and the Statutes of the United States in such case made and provided.

Dated July 3d, 1914.

LYNN HELM,
Special Master.

[Endorsed]: Cir. Ct. No. 1562. United States District Court, Southern District of California, Southern Division. Fred Stebler, Complainant, vs. Riverside Heights Orange Growers' Association et al., Defendants. Before Lynn Helm, as Special Master. Summons, Order or Subpoena to Defendants to File Account, Produce Books, etc. Filed Jul. 6, 1914, at 30 min, past 9 o'clock A. M. Lynn Helm, Referee. C. Meade, Clerk. Frederick S. Lyon, 504–7 Merchants Trust Building, Los Angeles, Cal., Solicitor for Complainant. Filed Oct. 3, 1914. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. [175]

[Agreement, June 27, 1911, George D. Parker and El Ranchito Citrus Association.]

George D. Parker, party of the first part, and El Ranchito Citrus Association, *pary* of the second part, hereby enter into the following agreement:

The said party of the first part will sell to said second party:

1 full sizer	$ 425.00
1 half sizer	285.00
1 washer	285.00
1 elevator and dump	110.00
1 elevator	75.00
1 box press, with attachments	78.00
90 ft. pack box conveyor	270.00
28 ft. of sorting table	84.00
Making a total of	$1,612.00

Said machinery to be placed in the Ranchito Citrus Assn.

Fruit ~~Exchange~~ Packing-house at Rivera, California on or before the first day of October, 1911. The sizers, press and attachments, sorting table and conveyors installed ready for operation; the balance of the machinery to be installed at the expense of the second party.

Second party agrees to pay for the above-mentioned machinery when it is installed and running to their satisfaction.

If for any reason there may be *an* legal proceedings or royalties claimed, the party of the first part hereby agrees to cover the same to the extent of $100 on each full sizer.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this 27th day of June, 1911.

GEO. D. PARKER. (Seal)
EL RANCHITO CITRUS ASSN.
By O. W. MAULSBY. (Seal)
C. L. EDMONSTON. (Seal)
J. ALLEN OSMUN. [176]

[Agreement, January 5, 1912, Sierra Madre La Manda Citrus Assn. and George D. Parker.]

THIS AGREEMENT, made and entered into this 5 day of Jan. 1912, between The Sierra Madr*a La Manda* Citrus Ass'n., of *La Manda* Park, California, and George D. Parker of Riverside, California,

WITNESSETH: That the said George D. Parker, party of the second part, agrees to perform the following work in the packing house of Sierra Madre Lamanda Citrus Assn.

1st. To install complete ready for the power, one (1) Full Parker No-Drop Sizer, for the sum of Four

hundered, Twenty-five Dollars ($425), & One (1) ½ Parker Sizer for the sum of Two Hundred, Eighty-five Dollars ($285), making a total of Seven Hundred, Ten Dollars ($710).

2d. Any additional work, and materials furnished, shall be done by the day, at the usual rate for such labor and materials.

All of the above work shall be performed in a workmanlike manner and the materials furnished are to be suitable in every way to complete said work.

It is further agrred that the party of the second part, shall protect the party of the first part, against any royalties that may be collected to the amount of One Hundred Dollars ($200) (figure 1 changed to 2 in ink) on each full sizer.

IN CONSIDERATION of the premises and of the faithful and proper performance of the hereinabove mentioned work by the said George D. Parker, The Sierra Madre Lamanda Citrus Assn. agrees to pay the said George D. Parker, the sum of Seven Hundred, Ten Dollars, ($710) together with any extra work, upon completion of said work.

WITNESS our hands and seal the day and year first above written.

M. MORGAN,
Asst. Secy. [177]

[Agreement, August 28, 1911, L. V. W. Brown and George D. Parker.]

THIS AGREEMENT made and entered into this 28th day of August, 1911, between L. V. W. Brown of Riverside, Cal., and George D. Parker of Riverside, Cal.

WITNESSETH: That the said George D. Parker, agrees to perform the following work in the packing-house of L. V. W. Brown at *Higrove,* Cal.

1st. To install, complete ready for the power One (1) full, Parker No-Drop Sizer (excepting any braces or timbers necessary to support the running boards from the roof) for the sum of Four Hundred & Twenty-five Dollars, ($425).

2d. To install Packed Box Conveyors, set up on the floor, ready for power, at Two Dollars & 90/100 ($2.90) per foot.

3d. Any extra labor, or materials furnished, to be charged at the usual rate for such work.

All of the above work shall be performed in a workmanlike manner and the materials used are to be suitable in every way to complete said work.

It is further agreed that the party of the second part, shall protect the party of the first part, against any royalties, that may be collected, to the amount of One Hundred Dollars.

IN CONSIDERATION of the premises and of the faithful and proper performance of the herein above mentioned work by the said George D. Parker, L. V. W. Brown agrees to pay the said George D. Parker, Four Hundred Twenty-five Dollars, together with any extra labor and material furnished, upon completion of said work.

WITNESS: Our hands and seal the day and year first above written.

L. V. W. BROWN.
By M. S. DENISON.
GEORGE D. PARKER.

The work to be completed before December 1st, 1911. [178]

[Agreement, October 14, 1911, Anaheim Orange Growers' Assn. and George D. Parker.]

THIS AGREEMENT, made and entered into this 14th day of Oct., 1911, between Anaheim Orange Growers' Association and George D. Parker of Riverside, California.

WITNESSETH: That the said George D. Parker, agrees to perform the following work in the packing-house of Anaheim Orange Growers' Association:

1st. To install, complete ready for the power, Two (2) Full, Parker No-Drop Sizers @ Four Hundred, Twenty-five Dollars ($425) each making a total of Eight Hundred Fifty Dollars ($850).

2d. 1–Brushing Machine, F. O. B. Factory for the sum of Two Hundred Eighty-five Dollars ($285).

3d. 1–Covey Press, and other Machines, or Machinery at the usual price for same.

4th. Sorting table, line shafting etc. to be installed by the day, and charged for at the usual prices for such materials and labor.

All of the above work shall be performed in a workmanlike manner, and the materials used are to be suitable in every way to complete said work.

It is further agreed that the party of the second part shall protect the party of the first part, against any royalties that may be collected, to the amount of One Hundred Dollars ($100) for each full sizer.

IN CONSIDERATION of the premises and of the faithful and proper performance of the herein above mentioned work by the said George D. Parker,

Anaheim Orange Growers' Assn. agrees to pay the said George D. Parker the sum of $1,135 together with any extra labor and materials furnished, upon completion of said work, this work to be completed on or about Nov. 20, 1911.

WITNESS our hands and seal the day and year first above written,

ANAHEIM ORANGE GROWERS' ASSN.

[Seal] L. D. THOMAS,

Prest.

GEO. H. MAXFIELD,

Secy.

GEO. D. PARKER. [179]

[Agreement, Placentia Orange Growers' Assn. and George D. Parker.]

THIS AGREEMENT, made and entered into this —— day of ——, 1911, between The Placentia Orange Growers' Assn. of Placentia, California, and George D. Parker of Riverside, California.

WITNESETH: That George D. Parker, party of the second part agrees to perform the following work in the packing house of The Placentia Orange Growers' Assn., at Placentia.

1st. To install complete ready for the power, One Full Parker No-Drop Sizer, for the sum of Four Hundred, Twenty-five Dollars ($425).

Brusher (in pencil)

2d. One (1) six foot, four run Orange ~~Washer~~ F. O. B. Factory, for the sum of Two Hundred, Eighty-five Dollars ($285).

3d. To install, complete, ready for the power, packed box conveyor, @ ($3) per foot.

4th. Any additional work and materials furnished shall be done by the day, at the usual rate for such labor and materials.

All of the above work shall be performed in a workmanlike manner and the materials used are to be suitable in every way to complete said work.

It is further agreed that the party of the second part shall protect the party of the first part against any royalties that may be collected to the amount of One Hundered Dollars ($100).

IN CONSIDERATION of the premises and of the faithful and proper performance of the herein above mentioned work by the said George D. Parker, The Placentia O. G. Assn., agrees to pay the said George D. Parker, the sum of ——— together with any extra work upon completion of said work.

WITNESS our hands and seal the day and year first above written.

PLACENTIA ORANGE *GROWER* ASS.

By A. PIEROTTI.

GEO. D. PARKER. [180]

[Agreement, December 22, Elephants Orchards and George D. Parker.]

THIS AGREEMENT, made and entered into this 22d day of December between ELEPHANT ORCHARDS and George D. Parker of Riverside, California.

WITNESSETH: That George D. Parker, party of the second part agrees to perform the following work in the packing-house *of Packing-house* of Elephant Orchards.

1st. To install, complete ready for the power, One

(1) Full Parker No-drop Sizer for the sum of Four Hundred, Twenty-five Dollars, ($425).

2d. Any additional work and materials furnished, shall be done by the day, at the usual rate for such labor and materials.

All of the above work shall be performed in a workmanlike manner and the materials furnished, are to be *sutiable* in every way to complete the said work.

It is further agreed that the party of the second part, shall protect the party of the first part, against any royalties that may be collected to the amount of One Hundred Dollars ($100).

IN CONSIDERATION of the premises, and of the faithful and proper performance of the herein above mentioned work by the said George D. Parker, ELEPHANT ORCHARDS agrees to pay the said George D. Parker the sum of Four Hundred, Twenty-five Dollars ($425), together with any extra work, upon completion of said work.

WITNESS our hands and seals the day and year first above written.

ELEPHANTS ORCHARDS,
By L. L. MOORE. [181]

[Agreement, December 30, 1911, F. Schwan & Bealey and George D. Parker.]

THIS AGREEMENT, made and entered into this 30 day of December, 1911, between F. Schwan & Bealey of Pomona, Calif. Parties of the first part & George D. Parker of Riverside, California.

WITNESSETH: That George D. Parker, party of the second part, agrees to perform the following

work in the packing-house of F. Schwan & Bealey.

1st. To install, complete ready for the power, One (1) Full Parker No-Drop Sizer for the sum of Four Hundred, Twenty-five Dollars ($425.)

2d. Any additional work, changing sorting table, and resetting shafting and machinery to be done by the day at the usual rate for such labor and materials.

All of the above work shall be performed in a workmanlike manner and the materials used, are to be suitable in every way to complete said work.

IN CONSIDERATION of the premises and of the faithful and proper performance of the herein above mentioned work, by the said George D. Parker, F. Schwan & Bealey agrees to pay the said George D. Parker the sum of Four Hundred & Twenty-five Dollars together with any extra work ~~upon completion of said work~~ as follows one-third (⅓) in thirty days (30) one-third (⅓) in 60 days and one-third (⅓) in ninety days (90) after completion of said work.

WITNESS OUR HANDS AND SEAL the day and year first above written.

F. SCHWAN & BEALEY,
By F. SCHWAN. [182]

[Agreement, August 15, 1911, I. L. Lyon & Son and George D. Parker.]

THIS AGREEMENT, made and entered into this 15th, day of August, 1911, between I. L. Lyon & Son, of Redlands, California and George D. Parker, of Riverside California.

WITNESSETH: That the said George D. Parker agrees to perform the following work: To install Two (2) Parker No-Drop Sizers in the house of I. L.

Lyon & Son at Redlands, California.

1st. These machines to be installed complete ready for the power. All work to be performed in a first class manner, for the sum of Eight Hundred Fifty Dollars ($850).

2d. Any extra labor or material that may be needed to brace the roof to support the cull belt or running board, to be extra. The sizers to have bins Thirty-four (34) feet long.

All of the above work, shall be performed in a workmanlike manner and the materials used, are to be suitable in every way to complete the said work.

IN CONSIDERATION of the premises, and of the faithful and proper performance of the herein above mentioned work by the said George D. Parker: The I. L. Lyon & Son, agrees to pay the said George D. Parker, the sum of Eight Hundred, Fifty Dollars (850), upon the completion of the said work, this work to be completed by November 1st, 1911.

WITNESS our hands and seal the day and year first above written.

I. L. LYON & SONS,
By HILL.
GEO. D. PARKER. [183]

[Agreement, October 17, 1911, El Camino Citrus Assn. and George D. Parker.]

THIS AGREEMENT, made and entered into this 17th day of October, 1911, between El Camino Citrus Association and George D. Parker of Riverside, California.

WITNESSETH: That the said George D. Parker, agrees to perform the following work in the packing-

house of El Camino Citrus Association at Claremont, Cal.

1st. To install, complete ready for the power, One (1) Full Sizer @ Four Hundred Twenty-five Dollars ($425) & Two (2) One-Half (½) Sizers @ Two Hundred Eighty-five Dollars ($285) each.

2d. 4–Parker Reweighers @ 100.00 each $400.00

3d. 1–6 ft. Washer four run @..... 285.00

4th. 1–Car Loading Press @..... 60.00

5th. 1–Dempsey, Little Giant Squeeze. 8.00

6th. 4–elevators for empty packing boxes, under sizers 2–empty box trucks ten feet long, 1–Fairbanks Morse heavy platform truck #236, 2 Covey Presses complete with roller top, and end guides, strapping attachments, etc. 2–packed box conveyors, 1 sorting table, 3–motors, line shafting etc. necssary to connect up all machinery, these items to be charged at the usual rate for such work, and materials or machinery.

All of the above work, shall be performed in a workmanlike manner and the materials used, are to be suitable in every way to complete the said work.

It is further agreed that the party of the second part shall protect the party of the first part against any royalties that may be collected to the amount of $100 for each full sizer.

IN CONSIDERATION of the premises, and of the faithful and proper performance of the herein above mentioned work, by the said George D. Parker, El Camino Citrus Association agrees to pay the [184] said George D. Parker ~~the sum of~~ for ma-

chinery, material &c. as indicated above together with any extra work upon completion of said work, this work to be completed on or ~~about~~ before Jan. 1st 1912.

WITNESS our hands and seal the day and year first above written.

EL CAMINO CITRUS ASSOCIATION.
By WILLIS S. JONES,
Pres.
P. H. NORTON,
Secy.
GEO. D. PARKER. [185]

[Agreement, September 28, 1911, Between Randolph Fruit Co. and George D. Parker.]

THIS AGREEMENT, made and entered into this 28 day of Sept., 1911, between the Randolph Fruit Co., of Highland, California, and Geroge D. Parker of Riverside, California.

WITNESSETH: That the said George D. Parker agrees to perform the following work in the packing-house of the Randolph Fruit Co., at Highland, California.

1st. To install, complete ready for the power, One (1) full, Parker No Drop Sizer for the sum of Four Hundred, Twenty-five Dollars ($425).

Any braces, or timbers needed to support cull belt and running board from ceiling if needed to be charged extra, in addition to above mentioned prices.

2d. Any work not specified, in addition to above to be paid for at the usual rate for such work.

All of the above work shall be performed in a workmanlike manner, and the materials used are to

be suitable in every way to complete said work.

It is further agreed that the party of the second part, shall protect the party of the first part, against any royalties that may be collected, to the amount of One Hundred Dollars ($100).

IN CONSIDERATION of the premises and of the faithful and proper performance of the herein above mentioned work by the said George D. Parker, the Randolph Fruit Co., agrees to pay the said George D. Parker the sum of Four Hundred Twenty-five Dollars, ($425) together with any extra labor and material furnished, upon completion of said work.

This work to be completed by Nov. 15th.

WITNESS: Our hands and seal the day and year first above written.

L. C. HUTCHINS. [186]

[Agreement, Between H. A. Unruh, Executor Estate E. J. Baldwin, and George D. Parker.]

THIS AGREEMENT, made and entered into this ——— Day of ———, 1912, Between H. A. Urah Executor Estate E. J. Baldwin, Arcadia, California, and George D. Parker of Riverside, California. Witnesseth that the said George D. Parker, agrees to perform the following work in the Packing-house of the Baldwin Estate at Arcadia, Cal.

(1) To install two (2) Parker Full sizers complete with distributing and cull belts binns etc complete ready for the power for $850.

(2) One sorting table for two grades and culls for $180.

(3) One Automatic box elevating dump, $300.

(4) Packing box conveyors set on the floor ready

for the power, @ $3 per foot.

(5) Any other work not specified above to be on time and material basis.

All of the above work shall be performed in a first class manner and the materials used shall be of the proper size and style for the above work.

It is further agreed that the work shall commence on or before the first of December and pushed as fast as possible to get the same in shape to pack fruit by the 15th of December, if possible.

In consideration of the premises and the faithful and proper performance of the herein mentioned work by the said George D. Parker. H. A. Unruh agrees to pay to the said George D. Parker the above sums as specified, upon the completion of the said work.

Witness our hands and seal the day and year first above written.

H. A. UNRUH,
Executor.
Estate of E. J. BALDWIN,
GEO. D. PARKER. [187]

[Agreement, August 24, 1912, Between Covina Orange Growers' Assn. and George D. Parker.]

THIS AGREEMENT, made and entered into this 24 day of Aug 1912 between COVINA ORANGE GROWERS' ASSN. and George D. Parker of Riverside, California.

WITNESSETH: That the said George D. Parker, agrees to perform the following work in the packing house of the Covina Orange Growers' Association, at Covina, California.

1st. To install One (1) Parker Sizer, 34 foot bins, complete with cull belts, and distributing belts, adjustable bins, installed ready for the power for the sum of Four Hundred, Twenty-five Dollars, $425.

2d. To install One (1) of our Mechanical Fruit Drying Machines, together with One (1) 15 H. P. Motor and Blower, suitable for the work, all installed, ready for the electric wiring. (The wiring being excepted) for the sum of Twenty-two Hundred Dollars. ($2,200).

3d. To install ——— feet of Packed Box conveyor for the sum of Three Dollars ($3) per foot, our patent turns to be included without extra cost.

4th. Any other work not specified in the above, to be done on a time and material basis.

All of the above work shall be done in a first class manner and the materials used are to be suitable for the proper installation of the above work.

It is further agreed that the party of the second part, shall protect the party of the first part, against any and all royalties that may be collected to the amount of One Hundred Dollars ($100) for each sizer.

IN CONSIDERATION of the premises and the faithful and proper performance of the herein above mentioned work by the [188] said George D. Parker, the Covina Orange Growers' Association, agrees to pay the said George D. Parker the above specified sums, upon completion of the said work.

WITNESS OUR HANDS AND SEAL the day and year first above written.

COVINA ORANGE GROWERS' ASSN.

[Seal] A. K. EVANS,

Pres.

C. E. CRAWFORD,

Secy.

GEO. D. PARKER. [189]

[Agreement, August 28, 1912, Between Antelope Heights Orange Co. and George D. Parker.]

THIS AGREEMENT, made and entered into this 28th day of August, 1912, between Antelope Heights Orange Co. and George D. Parker of Riverside, California.

WITNESSETH: That the said George D. Parker, agrees to perform the following work in the packing house of the Antelope Heights Orange Company, at Naranjo, Cal.

1st. To install Two (2) Parker Sizers, 34 foot bins, complete with the cull belts, and distributing belts, adjustable bins, installed and ready for the power for the sum of Four Hundred, Thirty-five Dollars, each making a total of Eight Hundred, Seventy Dollars ($870).

2d. One (1) Two Man, Roller Top Covey Press, with strapping attachment for the sum of Ninety Dollars, ($90) F. O. B. Factory.

3d. One (1) Fruit Elevator, (Miller Style) for the sum of One Hundred, Fifty Dollars, $150.

4th. One (1) Sorting table, 28 feet long, 3 grades, 4 cars capacity for the sum of Two Hundred, Seventy Dollars, $270.

5th. Packed Box Conveyor, at Three Dollars per foot. ($3) including the turns.

6th. Line Shafting, pullies, belting, hangers, to operate above machines for the sum of Three Hundred Dollars, $300.

7th. Any other work not specified in the above to be done on a time and material basis.

All of the above work shall be done in a first class manner, and the materials used are to be suitable for the proper installation of the above work.

It is further agreed that the party of the second part shall protect the party of the first part, against any and all royalties [190] that may be collected to the amount of One Hundred Dollars ($100) on each sizer.

IN CONSIDERATION of the premises and the faithful and proper performance of the herein above mentioned work by the said George D. Parker, The Antelope Heights Orange Company, agrees to pay the said George D. Parker, the above specified sums, upon completion of the said work.

WITNESS our hands and seal the day and year first above written.

ANTELOPE HEIGHTS ORANGE CO.

[Seal] E. S. ST. CLAIR,
Pres.

GEORGE D. PARKER. [191]

[Agreement, November 6, 1912, Between McPherson Heights Citrus Assn. and George D. Parker.]

THIS AGREEMENT, made and entered into this 6th day of Nov., 1912, between the McPherson

Heights Citrus Association of Orange, California, and George D. Parker, of Riverside, California.

WITNESSETH: That the said George D. Parker agrees to perform the following work in the packing-house of the McPherson Heights Citrus Association at

(1) To install two full standard Parker Sizers complete with cull and distributing belt ready for the power for the sum of $850.

(2) To install 4 packing box elevators to bring boxes from basement to floor underneath sizer binns, $160.

(3) 1 four run 8 foot Washer with sprinkler and pan under brushes to catch drip. F. O. B. cars Riverside, $375.

(4) 1 tank and tank elevator to feed washer F. O. B., $60.

(5) 1 car press F. O. B., $60.

(6) 1 box head beveler with knife to bevel centers and ends. F. O. B., $100.

(7) 2 two man Covey press, Roller top, with front guard, reel and stand, (as per Covey list or price), F. O. B., $208.

(8) 1 Drier for drying the washed fruit to be about 60 feet long and having an estimated capacity in normal weather of over three cars per day, $1,100.

All the above work shall be done in a first class manner and the materills shall be suitable for the proper *instalation* of the work in every way.

IN CONSIDERATION of the premises and the

faithful and proper performance of the herein above mentioned work by the **[192]** said George D. Parker the McPherson Heights Citrus Assn. agrees to pay to the said George D. Parker the above specified sums upon the completion of the said work.

WITNESS our hands and seal the year and day first above written.

McPHERSON HEIGHTS CITRUS ASSN.

[Seal] K. E. WATSON,

Pres.

CLATE STANFIELD,

Sec.

GEORGE D. PARKER. **[193]**

[Letter, 10–9–12, Parker Machine Works to Edmun Peycke Co.]

10–9–12.

Edmun Peycke Co.

Los Angeles, Cal.

Gentlemen:—

As requested by Mr. Buffington we submit the following for the equipment of the Upland House:

One full std. Sizer complete with distributing belt, etc.	$425.00
One ½ std. Sizer complete with distributing belt, etc.	285.00
One elevator from the basement to main floor with provision to feed from either floor	140.00
One three run 6 foot brushing machine	240.00
One change speed for feed and sorting table	40.00

One roller sorting table. 3 grades.....	225.00
One 5 H. P. motor.....	72.00
One two man plain top box press with strapping attachment to line shafts, hangers, pulleys, belting, and labor attaching and connecting up the above machines	160.00
	66
	—
	$1,676.00

This is based upon good work and material throughout in every respect as we have been doing our work.

We are resp. yours,

PARKER MACHINE WORKS.

GEO. D. PARKER. [194]

[Agreement, October 20, 1911, Between Pattee & Lett Co. and George D. Parker.]

THIS AGREEMENT, made and entered into this 20th day of October, 1911, between Pattee & Lett Co., of Riverside, Cal., and George D. Parker, of Riverside, California.

WINESSETH: That the said George D. Parker, agrees to perform the following work in the packing-house of Pattee & Lett Co. at Casa Blanca, California.

1st. To install complete ready for the power One (1) full Parker No-Drop Sizer, with bins Thirty-four (34) feet long, for the sum of Four Hundred, Twenty-five Dollars ($425).

2d. Any extra labor and material not specified, to be installed by the day, and to be charged at the usual rate for such work.

All of the above work, shall be performed in a workmanlike manner and the materials used are to be suitable in every way to complete said work, to the satisfaction of first party.

It is further agreed that the party of the second part shall protect the party of the first part, against any royalties that may be collected to the amount of One Hundred Dollars ($100) for each full sizer.

IN CONSIDERATION of the premises, and of the faithful and proper performance of the herein above-mentioned work by the said George D. Parker, Pattee & Lett Co., agrees to pay the said George D. Parker the sum of Four Hundred Twenty-five Dollars ($425), together with any extra work, upon completion of the said work.

This work to be completed on or about November 25th, 1911.

WITNESS our hands and seal the day and year first above written.

PATTEE & LETT COMPANY.

Witness: By W. P. LETT,

Mn'gr. **[195]**

[Agreement, Between Benchley Fruit Co. and George D. Parker.]

THIS AGREEMENT, made and entered into this —— day of ——, 191—, between The Benchley Fruit Co. of Fullerton, Cal., and George D. Parker,

WITNESSETH: That the said George D. Parker

agrees to perform the following work in the house of The Benchley Fruit Co., at Placentia, Cal.

1st.	To install one full sizer with 34–0″ bins installed ready for the power..	$425.00
	One ¼ sizer 15–0″ long bins on one side 18–0″ long	195.00
2d.	One elevator and dumper combined..	75.00
	One sorting belt with 16″ belt and one 12″ or two 6″ belts, same to be 12 feet long	145.00
3d.	Belting, shafting & pulleys.....	145.00
	Making a total....$965.00	

4th. All of said work shall be performed in a workmanlike manner and the materials used in said work shall be of the best, and said work shall be completed on or before the —— day of ——, 191—.

In consideration of the premises and of the faithful and proper performance of the hereinabove mentioned work by the said George D. Parker, and of the deposit by the said George D. Parker with The Benchley Fruit Co., of a sufficient bond of indemnity in the sum of $200, to indemnify the said Benchley Fruit Co., against any royalty which may be awarded to Fred Stebler or his assignee through any infringement of patents on the above sizers, in suit now pending, or any appeals from same, The Benchley Fruit Co. agrees to pay the said George D. Parker, the sum of $965, on completion of said work.

WITNESS OUR HANDS the day and year first above written.

_____

_____ [196]

Schedule of Sales of Parker Sizers, Including Adjustable Bins, Distributing Systems and Cost of Installation.

Selling Price for Whole Sizer, With Adjustable Bins, Distributing System and Cost of Installation $425.

Selling Price for ½ Sizer, With Adjustable Bins, Distributing System and Cost of Installation $285.

Parties to Whom Sold.	No. of Whole Sizer Sold.	No. ½ Sizer Sold.	Amount Sold for, Including Adjustable Bins, Distributing System, and Installation.
Fernando Fruit Growers' Assn.	1		$ 425
San Dimas Orange Growers' Assn.	5		2125
Claremont Citrue Anna.	1		425
El Camino Citrus Assn.	2		850
El Camino Citrus Assn.		2	570
West Ontario Citrus Assn.	1		425
Riverside Heights Packing Assn.	5		2000
Riverside Heights Packing Assn.		1	285
El Ranchito Citrus Assn.	1		425
El Ranchito Citrus Assn.		1	285
Whittier Citrus Assn.	2		850
A. Duffill Assn.	1		425
Sierra Madre Lamanda Citrus Assn.	1		425
Sierra Madre Lamanda Citrus Assn.		1	285
McPherson Heights Citrus Assn.	2		850
Orange Heights Fruit Assn.	1		425
Orange Heights Fruit Assn.		1	285
Covina Orange Growers' Assn.	1		425
			$11785

[197]

Parties to Whom Sold.	No. of Whole Sizer Sold.	No. ½ Sizer Sold.	Amount.
			11785
Pomona Fruit Growers' Exchange.	5		$2125
Pomona Fruit Growers' Exchange.		1	285
Walnut Fruit Growers' Assn.	1		425
Walnut Fruit Growers' Assn.		1	285
W. H. Jameson Fruit Co.	1		425
W. H. Jameson Fruit Co.		1	285
Elephants Orchards.	1		425
La Verne Orange Growers' Exchange.	1		425
La Habra Citrus Assn.	1		425
Placentia Orange Growers' Assn.	1		425
El Cajon Citrus Fruit Assn.	1		425
E. M. Ross Assn.	1		425
Colton Fruit Exchange.	3		1275
Indian Hill Citrus Assn.	1		425
Edmund Peycke Co.	2		850
Edmund Peycke Co.		1	285
A. Denman & Son.	1		425
Redlands Orange Growers' Assn.	2		850
Redlands Orange Growers' Assn.		2	570
Redlands Heights Orchards.	2		850
Antelope Heights Orange Assn.	2		850
Randolph Fruit Company.	1		425
Schwan & Bealey Company.	1		425
Walter Hill Company.	1		425
Chase & Company.	2	Omitted by mistake	$425
L. B. Skinner & Company.	2	" " " (In pencil)	$425
Benchley Fruit Company.	1		425
Pattee & Lett.	1		425
			$26670

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Parties to Whom Sold.	No. of Whole Sizer Sold.	No. ½ Sizer Sold.	Amount. 26670
L. V. W. Brown.	2		$850
Anaheim Orange Growers' Assn.	2		850
C. Lyons & Son.	2		850
C. C. Chapman.	2		850
C. C. Chapman.		1	285
W. T. Henderson & Sons.	1		425
San Pedro, Los Angeles & Salt Lake R. R.	2		850
Baldwin Estate.	2		850
	72	13	$32480

Total amount received for 72 Whole Sizers, including adjustable bins, distributing system and installation @ 425 .....$28,775.

Cost of 72 Whole Sizers, adjustable bins, distributing system and installation @ $356.52 per sizer.....$25,669.44

3,105.56

Profit, $3,105.56

Total amount received for 13½ sizers, including adjustable bins, distributing system and installation @ 285.....$ 3,705

Cost of 13½ sizers, including adjustable bins, distributing systems and installation, @ 228.10 per sizer.....$ 2,965.30

739.70

Profit, $739.70

Total, $3,845.26

Less deduction allowed by Master on proportion of overhead expense as per statement F, Omitted from p. 2..$1,800
Less cash.... 1,426.08

$373.92

373.92

$4,219.18

[199]

Statement B.

MATERIAL FOR SIZERS.

4	2″ x 4″ x 20′ rest for roll stands	4.20
2	2″ x 4″ x 20′ cap for chain rail	1.89
72	lin. ft. ¼″ x ¾″ hard wood guide for chain	1.50
4	1″ x 5½″ x 20′ belt rest	2.80
4	1″ x 4½″ x 20′ belt rest	2.10
20	2″ x 4″ x 28″ base for roll stands	2.17
22	2″ x 3″ x 14″ upper rafter posts	.91
11	2″ x 6″ x 24″ upper rafter	1.54
2	2″ x 4″ x 51″ drum posts for extension	.63
1	2″ x 3″ x 16′	.56
1	1″ x 12″ x 16″	1.12
2	2″ x 4″ x 48″ drum posts on drive end	.56
2	drums drilled	13.60
2	sprockets	5.60
2	S–6, 1 3/16″ take-up boxes	4.80
2	1 3/16″ bracket boxes	4.80
22	Roll stands with fruit guides	50.00
3	14″ return belt rollers with boxes	2.25
1	39-tooth 1 3/16″ #45 drive sprocket	2.80

4	ft. 1 3/16″ shaft	.60
3	ft. 1″ shaft	.32
180	ft. 7″ cotton belt	27.54
85	ft. #45 chain	6.37
30	K–5 #45 attachment links	.69
2	lbs. nails	.08
20	3″ #16 screws	.30
40	3/8″ x 2″ carriage bolts	.40
20	3/8″ x 2½″ bolts with wing nuts	.60

[200]

6	3/8″ x 4½″ carriage bolts	.18
4	3/8″ x 5½″ carriage bolts	.12
16	3/8″ x 3½″ carriage bolts	.10
5	days labor erecting @ $4 per day	20.00
	Freight and drayage	4.90
	Traveling expenses	7.90
		173.93

[201]

Statement C.

MATERIAL FOR ADJUSTABLE BINS AND DISTRIBUTERS.

20	2″ x 3″ x 37″ outside legs	2.10
20	2″ x 3″ x 34″ inside legs	2.03
20	rafters 2″ x 4″ x 50″	3.85
8	1″ x 1¾″ x 18″ floor rails	1.68
10	1″ x 3″ x 60″ braces	.84
4	1″ x 3″ x 72″	.42
4	2″ x 6″ x 16″ canvas rail	4.48
4	2″ x 6″ x 20′ CANVAS rail	5.60
2	2″ x 6″ x 16′ board iron rail	2.24
2	2″ x 6″ x 20′ board iron rail	2.80

2	1″ x 1″ x 16′ rail for board irons)	
2	1″ x 1″ x 20′ rail for board irons)	.72
2	2″ x 4″ x 16′ rest for cull belt	1.47
	2″ x 4″ x 20′ rest for cull belt	1.90
70	lineal ft. 1″ x 1½ rounded cull b. r'l	1.05
3	1″ x 12″ x 20′ for sides and ends	2.70
2	1″ x 12″ x 16′ for sides and ends	2.24
4	1¼ x 12″ x 18′ stepping for cull belt	4.68
70	lin. ft. of resaw 1½″ x 8″	2.70
70	lin. ft. 1″ x 2″ rounded for cull b	.84
6	⅝″ x 9″ suspension rods	2.64
8	2″ x 3″ x 18′ cull belt posts	.42
18	1″ x 12″ x 39″ partition boards	4.20
4	8″ x 3″ x 1″ wood pulleys	4.90
2	6″ x 3″ x 1″ wood pulleys	2.20
8	S–3 1″ boxes	2.40
23	yds. 48″ canvas	15.41
8	yds. 36″ canvas	1.36

[202]

140	ft. 3″ cotton belt	12.32
23	yds. carpet lining	.92
1	roll car lining paper	1.25
½	roll 1″ mesh chicken wire 36″	2.35
25	lbs. moss	1.75
18	board irons	2.70

(Continued)

C

MATERIAL FOR ADJUSTABLE BINS AND DISTRIBUTERS.

2½	lbs. staples	.12
2½	lbs. tacks	.25
6	lbs. nails	.24

2 gro. 1½ #10 screws	.50
1 gro. 2″ #10 screws	.30
8 ⅜″ x 4″ carriage bolts	.12
	$100.69
16 days labor—@ 4 per day	64.
Freight and expense drayage	10.00
	$174.69
Traveling expenses	7.90
	$182.59

[203]

Statement D.

MATERIAL, LABOR AND EXPENSE FOR INSTALLATION OF ONE ½ SIZER.

2 2″ x 4″ x 20′ rest for roll stands	$2.10
2 2″ x 4″ x 20′ cap for chain rail	1.89
72 lin. ft. ¼″ x ¼″ hard wood guid for chain	1.50
2 1″ x 5½″ x 20′ belt rest	1.90
2 1″ x 4½″ x 20′ belt rest	1.05
10 2″ x 4″ x 28″ base for roll stands	1.09
22 2″ x 3″ x 14″ upper rafter posts	.91
11 2″ x 6″ x 18″ upper rafter	1.15
2 2″ x 4″ x 51″ drum posts for extension	.63
1 2″ x 3″ x 16′	.56
1 1″ x 12″ x 16″	1.12
2 2″ x 4″ x 48″ drum posts on drive end	.56
2 ½ drums drilled	6.80
2 sprockets	5.60
2 S–6,1 3/16″ take-up boxes	4.80
2 1 3/16″ bracket boxes	4.80

10	roll stands with fruit guiders	25.00
3	14″ return belt rollers with boxes	2.25
1	39-tooth 1 3/16″ #45 drive sprocket	2.80
4	ft. 1 3/16″ shaft	.60
3	ft. 1″ shaft	.32
90	ft. 7″ cotton belt	14.27
85	ft. #45 chain	6.37
30	K-5 #45 attachment links	.69

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2	lbs. nails	.08
20	3″ #16 screws	.30
20	3/8″ x 2″ carriage bolts	.20
10	3/8″ x 2½″ bolts with wing nuts	.30
6	3/8″ x 4½″ carriage bolts	.18
4	3/8″ x 5½″ carriage bolts	.12
16	3/8″ x 3½″ carriage bolts	.10
		$90.04

(Continued)

2

STATEMENT D, CONTINUED.

		90.04
5	days labor erecting	20.00
	Freight and drayage	4.00
	Traveling expenses	2.00
		$116.04

[205]

Statement E.

COST OF MATERIAL, LABOR AND EXPENSE OF INSTALLING ADJUSTABLE BINS AND DISTRIBUTORS FOR ONE ½ SIZER.

10	2″ x 3″ x 37″ outside legs	1.05
20	2″ x 3″ x 34″ inside legs	2.03
20	Rafters 2″ x 4″ x 50″	3.85
4	1″ x 1½″ x 18″ floor rails	1.34
5	1″ x 3″ x 60″ braces	.42
2	1″ x 3″ x 72″	.21
2	2″ x 6″ x 16″ canvas rail	2.24
2	2″ x 6″ x 20′ canvas rail	2.80
1	2″ x 6″ x 16′ board iron rail	1.12
1	2″ x 6″ x 20′ board iron rail	1.40
1	1″ x 1″ x 15′ rail for board irons)	
1	1″ x 1″ x 20′ rail for board irons)	.36
1	2″ x 4″ x 16′ rest for cull belt	1.24
1	2″ x 4″ x 20′ rest for cull belt	1.45
35	lineal ft. 1″ x 1½ rounded cull b. r'l	.52
	1″ x 12″ x 20″ for sides and ends	1.35
	1″ x 12″ x 16″ for sides and ends	1.12
2	1¼ x 12″ x 18′ stepping for cull belt	2.34
36	lin. ft. of resaw 1¼″ x 8″	1.35
36	lin. ft. 1″ x 2″ rounded for cull b	.42
3	⅝″ x 9″ suspension rods	1.32
4	2″ x 3″ x 18″ cull belt posts	.21
9	1″ x 12″ x 39″ partition boards	2.10

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2	8″ x 3″ x 1″ wood pulleys	2.45
1	6″ x 3″ x 1″ wood pulleys	1.10
8	S–3 1″ boxes	2.40

12 yds. 48″ canvas	7.70
4 yds. 36″ canvas	.68
70 ft. 3″ cotton belt	6.16
12 yds. carpet lining	.46
	$46.27

2

STATEMENT E, Continued.

	$46.27
½ roll car lining paper	.63
¼ roll 1″ mesh chicken wire 36″	1.18
12½ lbs. moss	.88
9 board irons	1.35
1¼ lbs. staples	.06
1¼ lbs. tacks	.13
3 lbs. nails	.12
1 gro. 1½ #10 screws	.25
½ gro. 2″ #10 screws	.15
8 ⅜″ x 4″ carriage bolts	.12
12 days labor	48.00
Freight and expenses	8.00
	$112.06

[207]

Statement F.

OVERHEAD EXPENSES FROM SEPTEMBER 30, 1909, TO MARCH 10, 1913.

Office expenses	$6,089.03
Stockroom and shipping	5,053.40
Advertising	848.98
Light, Power and Heat	1,431.89

Insurance March 23, 1911 to March 25, 1913	662.77
Machinery upkeep	1,486.14
Shop expense (foreman) 3½ years at $1200 per year	4,200.00
Depreciation on machinery 10%	
Value $12,152.95, per year $121.52 for 3½ years	425.32
Interest on investment:	
Machinery $12,152.95	
Buildings and Real Estate. 12,230.00	
Patterns 5,946.97	
$30,329.92 at 6% per year, $ 1,819.79 for 3½ years	6,369.36
Total	$26,567.89

[208]

[Endorsed]: C. C. 1562. Filed Jul. 29, 1914, at 30 min. past 9 o'clock A. M. Lynn Helm, Referee. C. Meade, Clerk. Statement. Filed Oct. 3, 1914. Wm. M. Van Dyke, Clerk. By Chas N. Williams, Deputy Clerk. [209]

[Complainant's Exhibit No. 1.]

ITEMIZED STATEMENT OF MACHINE WORK AND MATERIAL FOR DRUM, S–6 TAKE–UP BOX, SPROCKET, ROLL STAND COMPLETE AND S–8 BRACKET BOX.

DRUM:

Castings 110#	4.95
5 ⅜ x 3 machine bolts	.07
1 pc. 1 3/16 x 23″ C. R. Steel 7½#	.34
1 key 5/; 6 x 5/16 x 3″	.05
2 ½ x ¾ set screws	.03
Labor	1.53
	$6.97

TWO S–5 and 6 BRACKET BOXES.

Castings 18½#	.89
2 ½ x 9 bolts	.05
2 lbs #4 babbit	.13
Labor	.45
	$1.52

SPROCKET

Casting 32#	1.44
2 ½ x 1 set screws	.03
Labor	.72
	$2.19

TWO S–7 and 8 BRACKET BOXES.

Casting 25#	1.13
2 lbs. #4 babbit	.13
Labor	.54
	$1.80

[210]

SIZER STAND.

Steel frame 5#	.18
Maple roll 3 x 3 x 20″	.14
1 pc. 2. x 3 x 2′ *O″* O. P.	.05
2 ¼ x 3 cap screws	.03
4 3/16 x ¾ rivets)	
2 ¼ nuts)	.03
4 connecting rods 1#	.04
2 guide castings 1#	.05
1 thumb nut, special	.02
2 adjusting levers 1#	.05
Labor	1.73
	$2.32

Diff $11.28 whole sizer .....
" 9.48– ½ " .....

14.80

U. S. District Court, No. 1562. Complns Exhibit No. 1. Filed Aug. 6, 14. Helm, Master. Filed Oct. 3, 1914. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. [211]

[Complainant's Exhibit No. 2.]

SCHEDULE OF SALES OF CALIFORNIA IMPROVED SIZERS, INCLUDING ADJUSTABLE BINS, DISTRIBUTING SYSTEMS AND COST OF INSTALLATION.

Selling Price for Whole Sizer, with Adjustable Bins, Distributing System and Cost of Installation $400.

Selling Price for ½ Sizer, with Adjustable Bins, Distributing System and Cost of Installation $285.

Parties to Whom Sold.	No. Whole Sizers Sold.	No. ½ Sizers Sold.	Amount Sold for, Including Adjustable Bins, Distributing System, and Installation.
Pasadena Orange Growers' Assn.	2		$800.00
Pasadena Orange Growers' Assn.		1	285.00
Placentia Orange Growers' Assn.	1		400.00
Benchley Fruit Company.	1		400.00
Golden Orange Groves, Inc.	2		800.00
Mountain Slope Cit. Groves, Inc.	1		400.00
Covina Heights Groves, Inc.	2		800.00
Placentia Mutual Orange Assn.	1		400.00
Bradbury Packing House.	2		800.00
Fullerton Mutual Oronge Assn.	1		400.00
Villa Park Orchards Assn.	3		1,200.00
La Habra Citrus Assn.	1		400.00
McPherson Heights Citrus Assn.	1		400.00
Placentia Mutual Orange Assn.		1	300.00
	18	2	$7,785.00

Filed Oct. 3, 1914. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. U. S. District Court, No. 1562. Complt's Exhibit No. 2. Filed Aug. 6, 14. Helm, Referee. [212]

[Complainant's Exhibit No. 3.]

Schedule of Sales of New Roles for Parker Sizers.

Selling price for whole set $50.00.
Selling price for one-half set $25.00.

Parties to Whom Sold.	No. Whole Set Sold.	No. Half Sets Sold.	Amount Sold for, Including Installation.
Anaheim Orange Growers' Assn.	2		$100.00
Anaheim Orange Growers' Assn.		1	35.00
Riverside Heights O. G. Assn.	2		none
Riverside Heights O. G. Assn.	2		100.00
Redlands Heights Orchards.	1		50.00
Redlands Heights Orchards.		1	25.00
I. L. Lyon & Sons.	1		50.00
I. L. Lyon & Sons.		1	25.00
Elephant Orchards.	1		50.00
	9	3	$435.00

Twenty Rolls for each whole set.

Ten Rolls for each half set.

Filed Oct. 3, 1914. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. U. S. District Court, No. 1562. Complt's Exhibit No. 3. Filed Aug. 6, 14. Helm, Referee. [213]

[Complainant's Exhibit No. 4.]

[In pencil:] Parker Modified. California Improved Sizer.

MATERIAL FOR SIZERS, LABOR AND EXPENSE OF INSTALLATION.

90 ft. 14″ 4–ply cotton belt.....	30.33
20 sizing rolls complete.....	13.84
1 40–tooth sprocket #45 chain.....	1.95
22 pcs. 2x3x11¼″ posts for upper rafters..	1.25

11	" 2x6x2′ 7″ upper rafters	2.47
4	" 1x10x20″ 0′ belt rest	4.80
2	" 2x4x4′ 4″	.30
2	" 2x6x4′ 4″	.50
2	" 1x4x8′ 0″	.33
1	pc. 1x12–16′ 0″	.96
2	drums	15.30
2	S–6 take-up boxes	1.39
2	S–8 bracket boxes	1.12
3	return belt rollers and boxes	2.25
20	S–18 roll bearings	1.78
20	S–19 base and stand	3.53
2	S–25 end bearings and base	.09
2	S–26 end bearings	.30
2	S–13 bevel gear brackets	.43
2	S–24 bevel gear bearings	1.23
3	1 3/16″ set collars	.42
4	1″ dolly boxes	1.36
35	belt lugs	.55
20	pcs. ½x½x4″ key stock	.30
2	" 1 3/16″x26″ C. R. shaft	1.44
1	pc. 1″x48″ C. R. steel shaft	.48
2	pcs. 1″x25″ do.	.49
4	5″ mitre gears	1.59
16	⅜x4½ carriage bolts	.19
[214]		90.97
	Footing page 1	90.97
20	⅜x5 carriage bolts	.24
6	⅜x7½ do.	.07
4	⅜x6½ do.	.06

4	⅜x4 lag screws	.06
70	¼x¾ wagon box rivets	.13
30	inches #11 Bristol belt lacing	.22
	Labor erecting	20.00
	Expense	3.95
	Freight and drayage	8.50
		$124.20

[215]

[In pencil:] For California Improved Sizer.

COST OF MATERIAL, LABOR AND EXPENSE OF INSTALLING ADJUSTABLE BINS AND DISTRIBUTORS FOR ONE SIZER.

10	pcs. 2x4x8′ 2″ cross bar	3.60
18	bin boards 1x12x3′ 6″	5.13
20	pcs. 2x4x4′ 4″ rafters	3.70
20	" 2x4x2′ 6″ legs	2.64
12	" 1x3x6′ 4″ braces	6.88
4	" 2x3x3′ 1½″ corner legs	.65
4	" 2x6x20′ canvas rail	4.40
4	" 2x6x16′ do.	3.52
2	" 2x6x20′ partition board r'l	2.20
2	" 2x6x*16″ 0″* do.	1.77
4	" 2x3x4′ 10″ end rail	.29
6	" 2x3x1′ 2″ for holding idler	.35
2	" 1x1x20′ for holding bin board irons	.18
2	" 1x1x16′ do.	.14
2	" 1x12x20′ side board for bin	2.40
1	pc. 1x12x20′ end board for bin	1.20
2	pcs. 1x12x16′ side board for bin	2.12
1	pc. 1x6x20′ finish board for bin	.50
2	pcs. 1x1¾x20′ floor rail	.38

2	" 1x1¾x16′ do.	.30
8	" 2x3x1′ 6″ posts for belt	.29
4	" 1x3x20′ belt rest	1.00
4	" 1x3x16′ do.	.80
6	" 1x1⅛x12′ belt rail	.45
4	" 1x2x18′ side board for belt	.72
4	" 1x6x18′ shelf for belt	2.16
	Drayage on above lumber	.85
		48.62

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	Footing page 1	48.62
140	ft. 3″ 3–ply cotton belt	7.56
8	supports for cull belt	.88
1	roll car lining paper	1.25
18	partition board irons	2.25
14	S–14 irons for bins	2.84
2	S–16 irons for bins	.60
8	S–3 1″ boxes	.88
4	8x3x1 iron pulley	2.93
22⅔	yds. 42″ canvas	12.35
24	yds. 36″ canvas	3.96
½	roll 36″ wire netting	2.23
24	yds. carpet lining	.96
16	⅜x4½ carriage bolts	.09
2	⅜x5½ do.	.03
2	⅜x2½ do.	.04
2	⅜x6 do.	.03
60	¼x1½ stove bolts	.23
24	2″ #14 wood screws	.07
1	gro. 2″ #10 do.	.22
1	" 1½ #10 do.	.18

6 lbs. 6d finish nails	.18
5 " 20d nails	.15
1 lb. 4d do.	.04
2 lbs. 8d. do.	.08
2 lbs. 8d common	.06
2½ " tacks	.25
2½ " staples	.12
20 " sea moss	1.20
2 " ⅜" cut washers	.14
1 lb. ½" do.	.06
	90.46

[217]

Footing page 2	90.48
20 ⅜x6 carriage bolts and washers	.30
labor assembling body frame and rafters	1.50
labor erecting	52.00
expense	10.27
freight	.75
Total	$155.28

[218]

[In pencil:] Calif. Imp. Sizer.

COST OF MATERIAL, LABOR AND EXPENSE OF INSTALLING ONE HALF SIZER.

1 pc. 2x3x11¼" legs	.57
1 " 2x6x18" upper rafter	1.85
2 pcs. 1x10x20' belt rest	2.40
4 " 1x3x20' holding belt	1.00
2 " 2x4x4' 4" drum stand	.30
2 " 2x6x4' 4" do.	.50
1 pc. 1x12x12' feed end of sizer	.72

2	pcs. 1x4x8′ do.	.23
2	half drums	7.65
2	S–6 boxes	1.39
2	S–8 boxes	1.12
35	belt lugs	.55
1	S–13 gear bracket	.22
1	S–24 gear bearing	.62
1	S–25 end bearing	.05
1	S–26 do.	.15
3	10–in. belt rollers and boxes	2.25
10	S–18 roll bearings	.89
10	S–19 base and stand	1.77
10	pcs. ½x½x4 key stock	.23
4	1″ dolly boxes	1.36
3	1 3/16 set collars	.42
2	pcs. 1 3/16x20 shaft	.57
1	pc. 1x36″ shaft	.34
1	pc. 1x25″ “	.24
2	5″ mitre gears	.80
1	40–tooth sprocket	1.95
10	sizing rolls	6.92
15	in. Briston belt lace	.11
8	⅜x4½ car. bolts	.09
10	⅜x5 do.	.12
4	3.8x7½ do.	.04
		37.42

[219]

	Footing page 1	37.42
2	⅜x4 lag screws	.03
2	⅜x6½ carriage bolts	.03
2	⅜x6 do.	.03

90	ft. 8″ 4–ply cotton belt	15.30
70	¼x¾ wagon box rivets	.13
	Labor erecting	16.00
	Expense	2.36
	Freight and drayage	6.95
	Total	$78.25

[220]

[In pencil:] California Sizer.

COST OF MATERIAL, LABOR AND EXPENSE OF INSTALLING ADJUSTABLE BINS AND DISTRIBUTORS FOR ONE HALF SIZER.

9	bin boards 1x12x3′ 6″	1.80
10	pcs. 2x4x4′ 7″ rafter	1.98
10	" 2x4x3′ 8″ legs	1.77
10	" 2x4x2′ 6″ do.	1.61
10	" 1x3x4′ brace	.50
10	" 2x4x5′ cross-bar	2.43
2	" 2x3x3′ 1½″ legs	.30
2	" 2x6x20′ canvas rail	2.00
2	" 2x6x16′ do	1.60
1	" 2x6x20′ bin board rail	1.00
1	" 2x6x16′ do	.80
1	" 1x1x20′ board iron holder	.15
1	" 1x1x16′ do	.10
1	" 1x12x20′ side board for bins	1.20
2	" 1x12x16′ side rail	1.92
1	" 1x6x12 finish piece for end	.30
2	" 1x1¾x16′ floor rail	.40
2	" 1x1¾x20′ do	.52
4	" 2x3x18″ posts for bearings	.17

2	" 1x3x20′ belt rest	.50
2	" 1x3x16′ do	.30
3	" 1x1⅛x12′ side rail for belt	.45
2	" 1x3x18′ back for belt	.45
2	" 1x6x18′ table for belt	.90
	Labor assembling body frame and rafters	.75
	Drayage	.50
		$24.40

[221]

	Footing page 1	24.40
7	S–15 side arms	1.42
1	S–16 do	.30
4	S–3 1 3/16″ bearing	.44
2	8x3x1 iron pulleys	1.47
9	partition board irons	1.13
11⅓	yds. 42″ canvas	4.18
12	yds. 36″ canvas	1.98
¼	roll 36″ wire netting	1.12
12	yds. carpet lining	.48
½	roll car paper	.65
10	lbs. sea moss	.60
1½	lbs. ⅜″ cut washers	.10
½	lb. ½″	.03
10⅜x6	carriage bolts and washers	.15
8⅜x3½	car. bolts	.05
2⅜x5½	do	.02
4⅜x2½	do	.04
30¼x1½	stove bolts	.12
12	2″ 314 wood screws	.04
½	gro. 2″ # 10 do.	.11

½ " 1½ # 10	.09
4 lbs. 6 d finish nails	.12
3 " 20 d do	.09
½ lb. 4 d do	.02
2 lbs. 8 d do	.06
2 " 8 d common nails	.06
1½ lbs. tacks	.15
1½ " staples	.08
70 ft. 3" 3-ply cotton belt	3.78
	43.28

[222]

4 Brackets for belt	.44
Labor erecting	52.00
Expense	7.67
Freight	.50
	$103.89

[223]

[In pencil:] Calif. Improved Sizer.

Total amount received for 18 whole sizers, including adjustable bins, distributing system and installation.	$7,200.00	
Costs of 18 whole sizers, adjustable bins, distribution system and installation	5,030.64	Profit
	2,169.36	$2,169.36

Total amount received for 2 half sizers, including adjustable bins, distributing system and installation	585.00	
Cost of 2 half sizers, including adjustable bins, distributing system and installation	364.28	Profit
		220.72
	220.72	
Total amount received for 9 whole sets and 3 half-sets of rolls for Parker sizers	435.00	
Total cost of 9 whole sets and 3 half-sets of rolls for Parker sizers	374.56	
	60.44	Profit
		60.44
Total profits		$2,450.52
Less deduction allowed by master on proportion of overhead expense as per your statement. [224]		

OVERHEAD EXPENSES FROM APRIL 1, 1913 to JULY 1, 1914.

Office expenses	$1,583.07
Stockroom and drayage	1,037.85
Advertising	311.11
Light, power and heat	612.55
Insurance	443.76
Interest	651.20

Machinery up-keep		347.49
Shop expense (foreman)		1,359.19
Depreciation on machinery 10% value $7,899.43, per year $789.94 for 1 1/16 years		921.59
Interest on investment:		
Machinery	$ 7,899.43	
Buildings and real estate	12,230.00	
Patterns	6,250.67	
	$26,380.10 at 6%	
per year $1,582.80, for 1⅛ years		1,846.60
Total		$9,114.41

[Endorsed]: U. S. District Court No. 1562. *Complaint's* Exhibit No. 4. Filed Aug. 6, '14. Helm, ~~Referee~~ Master. Filed Oct. 3, 1914. Wm. M. Van Dyke, Clerk. By Chas N. Williams, Deputy Clerk. [225]

[Complainant's Exhibit No. 5.]

LIST OF PARTS FOR GRADER.

(23 ft. Grader for Belt Bin System.)

4 ft. of #34 sprocket chain at 4½¢	.18
18–3½x1x¾ iron pulleys at 11¢	1.98
1 socket wrench	.19
18 C. I. adjusting angles at 6¢	1.08
18 C. I. 1″ belt weights with pulleys at 12¢	2.16
2–¾″ shaft couplings at 22¢	.44
20–¾″ dolly boxes at 9¢	1.80
4–12″ rope sheaves at 37¢	1.48

4–4″ miter gears at 28¢ 1.12
2–1″ set collars at 8¢ ..... .16
2–¾″ set collars at 7¢ ..... .14
4–1″ bearings at 27¢ 1.08
1–1″ center bearing ..... .16
1–12″x3″x1″ iron pulley, 13# 1.27
36 C. I. roller ends at 3¢ 1.08
49 ft. ¾″ shaft, 4 pieces, 1½ lbs. per ft. 73½ at 3¾ 2.76
68 in. 1″ shaft, 3 pieces, 15 lbs at 3¾¢ ..... .56
101 ft. of ⅝″ grader rope (2) at 4½¢ 4.55
2–⅝″ rope couplings at 21½¢ ..... .43
46 ft. ⅝″ rope moulding on center rail at 2¢. .92
68 ft. 1″ leather belt at .048 per ft. 3.26
40 sq. ft. 2x3 O. P. S4S at 3½¢ 1.40
66 sq. ft. 2x4 O. P. S4S at 3½¢ 2.31
36–⅜x2″ set screws at 1¢ ..... .36
36–⅜″ Hex nuts tapped at 40¢ per C ..... .15
36 C. I. roller arms 55# 1.45
11–⅜x12″ C. bolts at 2¢ ..... .22

[226]

6–⅜x3″ C. bolts at 70¢ per C. ..... .05
4–⅜x3 lag screws at 80¢ per C ..... .03
16–⅜x5 lag screws at $1.04 per C. ..... .17
184–1½″ #12 F. H. wood screws at 19¢ per gross ..... .25
36–#5 screw eyes at 45¢ per gross ..... .12
20–#2 stag steel belt hooks at 75¢ per C. ..... .15
36–⅛″x¾″ cotter pins at 60¢ per M. ..... .03
26–2½″ #14 F. H. wood screws at 34¢ gross. .06
41 lineal ft. of 4x4 clear cedar for rollers, 54⅔ ft. at 35¢ 1.92, labor $1.65 ..... 3.57

7⅔ yds. of 22″ #6 canvas at 26½¢ per yd..	2.03
4⅕ sq. ft. hardwood for straddle blocks at .085.....	.36
40–1½″x#9 F. H. wood screws at 16¢ gross.	.05
Labor in shop assembling wood parts, 1½ days at 3.50.....	5.25
Labor outside erecting, 2 men 1 day and expenses at $5.00.....	10.00
Average freight 700 lbs. at 23¢.....	1.61
Cartage, both ends.....	1.00
2–14 P. #34 sprockets at 29¢.....	.58
Overhead expense 2% on selling price of $175.00.....	3.50
Total cost.....	$61.49

Overhead expense includes Office Supplies, Office Labor and Expense, Light, Power and Water, Taxes, Insurance and Depreciation on Buildings and Machinery.

Above selling price includes cull belts as per following cost list: **[227]**

150 ft. of 2½ cotton belt at .037 per ft.....	5.55
4–5½″ pulleys.....	1.00
9 bearings.....	.82
Lumber.....	2.00
Shaft, screws and bolts etc.....	.40
5 ft. of #32 chain at 4½¢.....	.23
3 hrs. shop labor at 35¢.....	1.05
2 hrs. erecting at 60¢.....	1.20
2 sprockets #32 at 20¢.....	.40
Total cost.....	$74.14

SHEET I. **[228]**

[Complainant's Exhibit No. 5.]

LIST OF PARTS FOR BELT DISTRIBUTING SYSTEM NOT INCLUDING GRADER.

150 feet of 24″ 3 ply cotton belt at .3971	59.06
300 sq. ft. of carpet padding at .009	2.70
24 yds. of 36″ #6 canvas at 43¢	10.32
8 yds. of 30″ 8 oz. canvas at 15¢	1.20
216 sq. ft. 36″ chicken wire, 1″ mesh, at .0127	2.76
6–1 3/16 set collars at 10¢	.60
4–1 3/16 dollin boxes at 13¢	.52
18 division board castings at 4¢	.72
1–30 p #45 sprocket	.70
1–7 p #45 sprocket	.23
4–1 3/16″ take up bearings	.69
46–#2 stagg steel belt hooks at 75¢ C	.35
8–½″x4½″ C. bolts at $1.60 C	.13
4–½″x5″ C. bolts at 1.75 C	.07
68–⅜″x4″ lag screws at 90¢	.61
28–⅜″x6″ " " at $1.14	.32
8–⅜″x3″ " " at 79¢ C	.07
1# of tacks	.11
1# of staples	.07
6 sash pulleys	.16
40–¼″ washers 1#	.10
20 ft. of #45 sprocket chain at 5¢	1.00
1–1 3/16″ shaft 6½ ft. long, 2–1 3/16″ shaft 30½ ft. long 11′ 7″=43½# at 3.75	1.63
4–14″x24″x1 3/16″ shop pulleys, 70 sq. ft. 2x8 O. P. S1S at 30¢—2.10—8 C. I. centers and labor $3.95	6.05

1 set (18) galv. iron guides, 46½# iron 2.54 solder 20¢, labor 1.30..... 4.04

[229]

2–3½x26″ idlers 6 sq. ft. lumber 18¢, labor 9¢ 2–½″ pins–3¢..... .30

4–½″ U. boxes C. I. at 2¢..... .08

1 set (18) wood guide holders, 12 sq. ft. lumber 36¢ Labor 3 hrs. at 35¢=1.05.. 1.41

1 set (24) slide boards, 48 sq. ft. Tex. pine =1.44 Labor 2½ hrs. at 35¢=88¢.... 2.32

1 set (28) rafters, 82 sq. ft. 2x4 S4S at .035=2.87 Labor 1 hr. 35¢..... 3.22

1 set (18) front legs of 2x3=21 sq. ft. at 3¢=.63 Labor 1½ hrs. at 35¢ .53..... 1.16

1 set (32) back legs of 2x=87 sq. ft. at 3¢=2.61 Labor 1 hr. 35¢..... 2.96

1 set (14) tie blocks 1½x2″, 5 sq. ft. lumber=15¢ Labor 1 hr. 35¢..... .50

1 set (18) division boards 1¼x12″=67½ ft. at 6¢..... 4.05

Labor 3 hrs. at 35¢..... 1.05

1 set (4) drum frames of 2x4=20 sq. ft. at 3¢ 60¢ Labor ½ hr. at 35¢=18¢..... .78

1 set (18) guide sticks 35 sq. ft. clear O. P. at 4½¢ 1.58 Labor 2½ hrs. at 35¢ .87. 2.45

8–1x12x18 deck boards Texas=144 sq. ft at 3¢..... 4.32

4–1¼x12x18 front boards, clear stepping 90 ft..... 540

4–1x8x18 back boards, clear 48ft. at 4½¢.. 2.17

164 lineal ft. 2x3 siderails, 82 sq. ft. at 3¢..... 2.46

1–1¼x14x20 front end boards, 30 sq. ft. at 6¢	1.80
4–drum braces 2x3x2 ft., 4 sq. ft. at 3¢=12¢ Labor ½ hr. 18	.30
8–drum brackets 4 sq. ft. 2x4 O. P. S4S at 3½¢=14 Labor ¼ hr. .09	.23

[230]

Packing and shipping, 3 hrs. at 30¢	.90
10 lbs. of nails at 3½¢	.35
2 days 2 men setting up at $10.00 per day	20.00
Average freight on 1300 lbs. at 23¢	2.99
Cartage both ends	1.50
Overhead expense 2% on selling price of $250.00	5.00
Total cost	$161.91

Overhead Expenses includes Office Supplies, Office Labor and Expense, Light, Power and Water, Taxes, Insurance and Depreciation on Buildings and Machinery.

Sheet II.

[Endorsed]: 1562. Complaint. Exhibit No. 5. Filed Aug. 6, 14. Helm, Master. Filed Oct. 3, 1914. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. [231]

[Affidavit of George D. Parker as to Statement of Earnings.]

United States District Court, Southern District of California, Southern Division.

FRED STEBLER,

Appellant,

vs.

RIVERSIDE HEIGHTS ORANGE GROWERS' ASSOCIATION and GEORGE D. PARKER,

Appellees.

State of California,
County of Los Angeles,—ss.

George D. Parker, one of the above-named defendants, being duly sworn, deposes and says that the annexed constitutes a full, true and correct statement or account disclosing the number of machines called for by the subpoena of the Master herein, manufactured and sold by the said George D. Parker from the year 1909 up to and including the year 1913, and constitutes a true and accurate account of the cost of the said machines and the entire price for which the said machines were sold, and is a true and correct statement of the parties to whom the said machines were sold and of each and all of the sales made by the said George D. Parker as the manufacturer of said machines held to be an infringement of reissue letters patent No. 12,297, dated December 27, 1904. Said statement showing all the gains, profits or advantages made or received by him through the manufacture and sale of the said

infringing machines, and that the schedule of machines hereto attached constitute a total number of graders or sizers made an sold by the said George D. Parker, and includes therein all of the machines manufactured and sold by the said George D. Parker to his codefendant the Riverside Heights Orange Growers' Association, and that the contracts hereunto **[232]** annexed are all of the contracts signed by the purchasers of said infringing machines manufactured by George D. Parker, and which are in his possession at this time, and herewith marked F.

The statement hereunto attached marked Statement "A" is a full list disclosing each and every packing-house in which the infringing machines manufactured and sold by the said George D. Parker were installed.

The statement marked "B" constitutes a true and correct statement of the cost of material and labor and expenses for the building and installing of a full-size sizer.

The statement marked "C" constitutes a true and correct statement of the cost of the material and labor and expenses incident to the manufacture and construction of the bins and distributors supplied for a full-size sizer.

The statement marked "D" constitutes a true and correct statement of the cost of the material and labor and expense incident to the manufacture, construction and installation of a one-half size, and

The statement marked "E" constitutes a true and correct statement of the cost of the material and labor and expense incident to the manufacture, con-

struction and installation of the bins and distributors for a one-half sizer, and Statement "F" is a true statement of overhead expenses of plant.

GEO. D. PARKER.

Subscribed and sworn to before me this 28th day of July, 1914.

[Seal] CAROLINE E. SMITH,
Notary Public in and for the County of Los Angeles, State of California. **[233]**

THIS AGREEMENT, made and entered this 2 day of Oct. 1911, between Redlands Heights Orchards and George D. Parker of Riverside, Cal.,

WITNESSETH: That the said George D. Parker, agrees to perform the following work in the packing-house of Redlands Heights Orchards.

1st. To install, complete ready for the power, Two (2) Parker No-Drop Sizers @ Four Hundred Twenty-five Dollars ($425) each, making a total of Eight Hundred Fifty Dollars ($850). Any extra labor or material that may be needed to brace the roof, to support the cull belt or running-board, to be extra. The Sizers to have bins Thirty-four (34) feet long.

2d. Any extra labor and material not specified above to be charged at the usual rate for such work.

All of the above work, shall be performed in a workmanlike manner and the materials used, are to be suitable in every way to complete the said work.

IN CONSIDERATION of the premises, and of the faithful and proper performance of the herein

above-mentioned work by the said George D. Parker, Redlands Heights Orchards agrees to pay the said George D. Parker the sum of Eight Hundred Fifty Dollars ($850), together with any extra work, upon the completion of the said work, this work to be completed on or about November 1st, 1911.

WITNESS our hands and seal the day and year first above written.

GEO. D. PARKER.

REDLANDS HEIGHTS ORCHARDS,

A. D. KNIGHT, Mgr. **[234]**

In the United States District Court for the Southern District of California, Southern Division.

IN EQUITY—No. 1262.

FRED STEBLER,

Complainant,

vs.

RIVERSIDE HEIGHTS ORANGE GROWERS' ASSOCIATION et al.,

Defendants.

Supplemental Statement of Riverside Heights Orange Growers' Association.

State of California,

County of Riverside,—ss.

H. D. French, being duly sworn according to law, deposes and *say* that he is the president of the Riverside Heights Orange Growers' Association, one of the defendants to the above-entitled action; that he

has examined the books of the company with the view of reporting any profit made by the said company by the use of the five (5) fruit-grading machines purchased from the codefendant, George D. Parker, and set forth in the statement heretofore filed, but has been unable to ascertain any profits made by the said Riverside Heights Orange Growers' Association by the use of the said fruit-grading machinery over and above the profit which would have been made by the said company through the use of the well-known California grader, the use of which was open to the Riverside Heights Orange Growers' Association at the **[235]** time of its purchase from the codefendant herein—George D. Parker—to the machines referred to in the statement heretofore filed on behalf of the Riverside Heights Orange Growers' Association, that the said Riverside Heights Orange Growers' Association has purchased from the said George D. Parker no other fruit-grading machines than the ones set forth in the statement heretofore filed; that the Riverside Heights Fruit Growers' Association did purchase from the said George D. Parker, after the granting of the Preliminary Injunction against the defendant—Riverside Heights Orange Growers' Association, a number of rollers, eighty (80) in number, and had the said George D. Parker remove each and every roller from the grading machines, purchased as heretofore set forth from the said George D. Parker, and substitute the new rollers for the ones in the machines previously purchased, the said new

rollers being properly positioned by the said George D. Parker in the previously purchased machines referred to in the statement heretofore filed, and connected one to the other in the same manner as the rollers of the California graders, that is to say, the series of rollers of each of the fruit graders were so connected as to be driven in unison from a single source of power in contradistinction to the independently driven and independently adjustable rollers embraced in the machines as originally supplied; that affiant from an examination of the books of the Riverside Heights Orange Growers' Association has been unable to ascertain or determine any profit derived from the new rollers purchased from the said George D. Parker.

H. D. FRENCH.

Subscribed and sworn to before me this 7th day of August, 1914.

[Seal] O. P. SANDERS,

Notary Public Riverside County, California.

[236]

State of California,

County of Riverside,—ss.

Henry D. French, being duly sworn, says: That he is the president and manager of the Riverside Heights Orange Growers' Association, a corporation engaged in the business of packing citrus fruits at Riverside, California; that the said association purchased from the Parker Machine Works of Riverside, California, on or about April 30th, 1910, one Parker sizer together with adjustable bins and cull

and distributing belts paying therefor the sum of $400 cash.

That on or about February 17, 1911, the said association purchased from the said Parker Machine Works one one-half Parker sizer with adjustable bins and cull and distributing belts paying for the same $285 cash.

That on or about October 1st, 1911, the said association purchased from the Parker Machine Works for the sum of $400 each, four Parker sizers with adjustable bins and cull and distributing belts.

That all these sizers were set up and installed in the packing house used by the said Riverside Heights Orange Growers' Association by the said Parker Machine Works the cost therefor being included in the price paid for the sizers as above stated.

HENRY D. FRENCH,
President and Manager,
Riverside Heights Orange Growers' Association.

Subscribed and sworn to before me this 28th day of July, 1914.

[Seal] O. P. SANDERS,
Notary Public in and for Riverside County, California. [237]

[Endorsed]: Filed Jul. 28, 1914, at 30 Min. Past 9 o'clock. Lynn Helm, Referee. A. M. C. Meade, Clerk.

[Endorsed]: C. C. No. 1562. U. S. District Court, Southern District of California, Southern Division. Fred Stebler, Complainant, vs. Riverside Heights Orange Growers' Association et al., Defendants.

Supplemental Statement of Riverside Heights Orange Growers' Association. Filed Aug. 7, 1914, at 40 Min. Past 5 o'clock P. M. Lynn Helm, ~~Referee~~, Master. L. H., Clerk. Filed Oct. 3, 1914. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. Nicholas A. Acker, Attorney at Law, Foxcroft Building, 68 Post Street, San Francisco, Cal., for Defendants. [238]

[Defendant's Exhibit No. 1—January 7, 1905, California Iron Works to Riverside Heights Fruit Co.]

Riverside, California, Jan. 7, 1905.

M. Riverside Heights Fruit Co.

#10.

To California Iron Works, Dr.,

Manufacturers of Fruit Packers' Machinery.

General Machine-shop Work.

866 Vine Street. Foundry and Pattern Shop.

Telephone Red 502.

Balance..... 74.40

Dec. 20. 2-36 Roller Graders, 157.00..314.

Extra for one more size in each mach., 10.00..... 10.00

398.40

Check Feb. 16, 300.00.

Filed Oct. 3, 1914. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk.

U. S. District Court No. 1562. Defendant's Exhibit No. 1. Filed Aug. 6, 1914. Helm, Referee.

Terms Net Cash on receipt of Invoice. All Bills not paid in ten days subject to sight draft. [239]

[Defendant's Exhibit No. 2—Letter September 12, 1912, California Iron Works to Redlands Fruit Assn.]

Wood Split Pulleys, Belting, Shafting, etc., Brush Machines, California Graders, Benchley Graders, Rope Graders.
Telephone Red 502.

Fred Stebler. A. A. Gamble.

California Iron Works,
Manufacturing Machinists and Iron and Brass Founders.
Supplies for Steam Plants, Pumping Plants and Irrigating Systems.
Manufacturers of Fruit Packers' Machinery.

Riverside, California, Sept. 12, 1914.

[In pencil:] 1 Machine, 157.50.

Redlands Fruit Assn.,
Redlands, California.

Gentlemen:

Noticing an item to the effect tha you expected to make some additional *improvments* this year, especially that you intended to add two additional graders, let us inquire if we cannot interest you in this at least. Remembering that the machine you got from us last year gave you reason for complaint and that in this we were probably at fault we would state that we are willing to correct this this season, free of charge, if it can be done early before the rush begins and we should also like to be able to furnish you with your new machines. We have a two-fold object in

this, one of which is to sell you a superior machine as we have made *improvments* this year and endeavored to correct the slight failures of the previous season, another object is to sell you a machine that you need have no fear of being interrupted in using later on, as you may have been previously advised of the letter's patent on fruit *gra* graders having individual adjustable rollers placed end to end, are in litigation at present but the prospects are before another season is over we will be declared the sole and rightful owners of this patent, *wh* which will place us in a position to at once enforce our rights not only with the manufacturers of these machines but the users as well, therefore we are taking some pains to impress this on the public at this time that it may be under-Garlock packing for high duty. The only packing that will hold crude oil. [240]

stood and thus perhaps save the so-called innocent purchaser form disagreeable *entanglments* or if not

that he may have none but himself to blame should he later not only be made defendant in a suit for damages besides finding his equipment suddenly tied up pending final adjustment,

We are now as we always have been guaranteeing our customers against any intereference against machines purchased from us and we choose to add that there is something back of this guarantee besides a mere assertion. Let us *herefore* quote you these machines, the two of them for $300.00, delivered and set up and fully guaranteed both as to rights to use and to perfect working order. If we can do this much for you it matters not to us who does the rest as we think it will be decidedly to your interest, otherwise we should not have been so persistent.

Trusting you will be able to consider this matter in the same light in which it is given, we remain,

Very truly yours,

CALIFORNIA IRON WORKS.

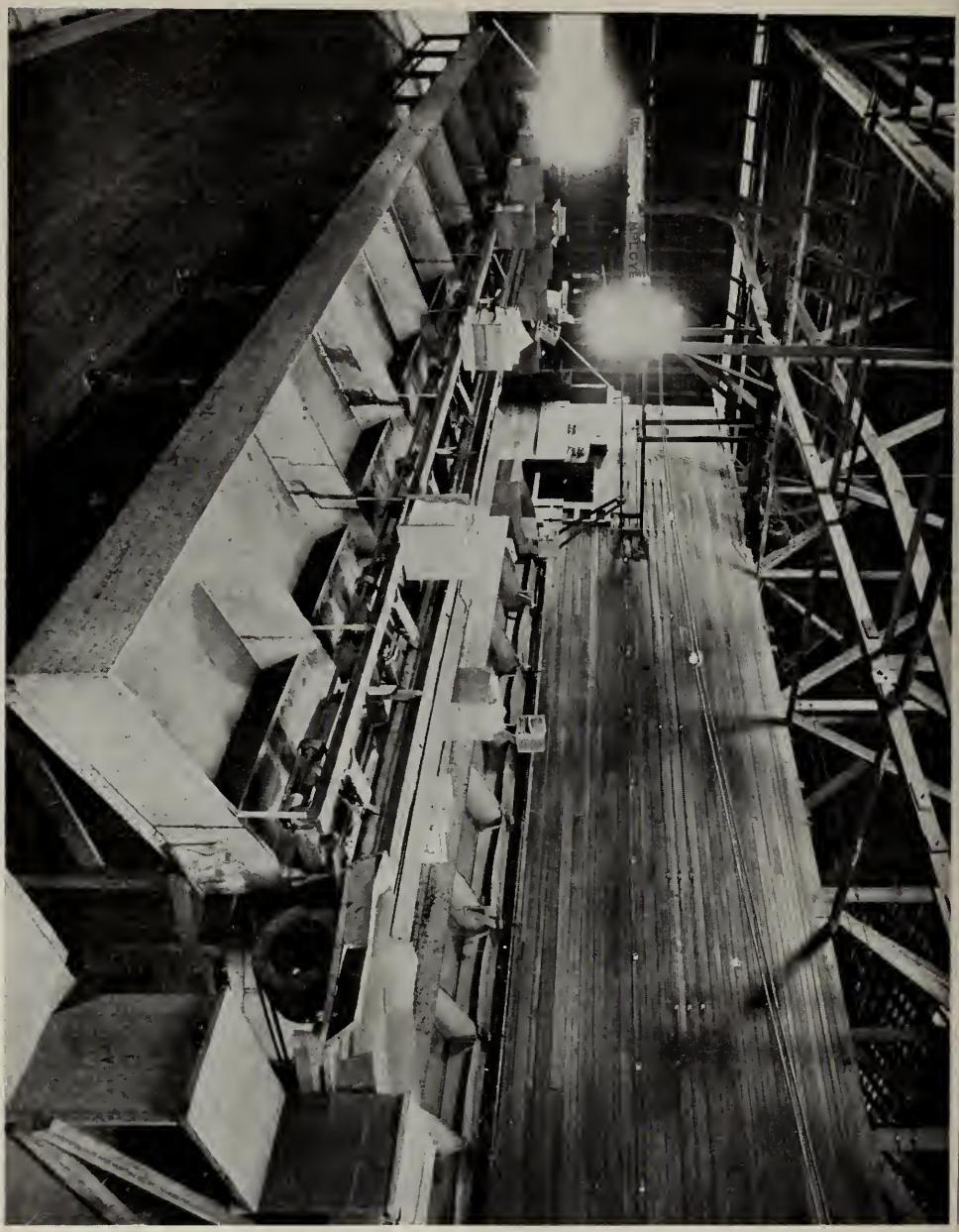
By F. STEBLER,

NB.

Garlock Packing for high duty. The only Packing that will hold crude oil.

No. 1562. Defendant's Exhibit No. 2. Filed Aug. 6, 1914. Helm, Master. Filed Oct. 3, 1914. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. [241]

[Defendant's Exhibit No. 3.]



[Endorsed]: U. S. District Court. No. 1562. Defendant's Exhibit No. 3. Filed Aug. 7, 1914. ————, Master.

Filed Oct. 3, 1914. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk.

[Defendant's Exhibit No. 4.]

[Endorsed]: U. S. District Court. No. 1562. Defendant's Exhibit No. 4, Filed Aug. 7, 1914. ————, Master.

Filed Oct. 3, 1914. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk.

[Defendant's Exhibit No. 5.]

[Endorsed]: U. S. District Court. No. 1562. Defendant's Exhibit No. 5. Filed Aug. 7, 1914. ————, Master.

Filed Oct. 3, 1914. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk.

[Defendant's Exhibit No. 6.]

[Endorsed]: U. S. District Court, No. 1562. Defendant's Exhibit No. 6. Filed Aug. 7, 1914. ————, Referee.

Filed Oct. 3, 1914. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk.

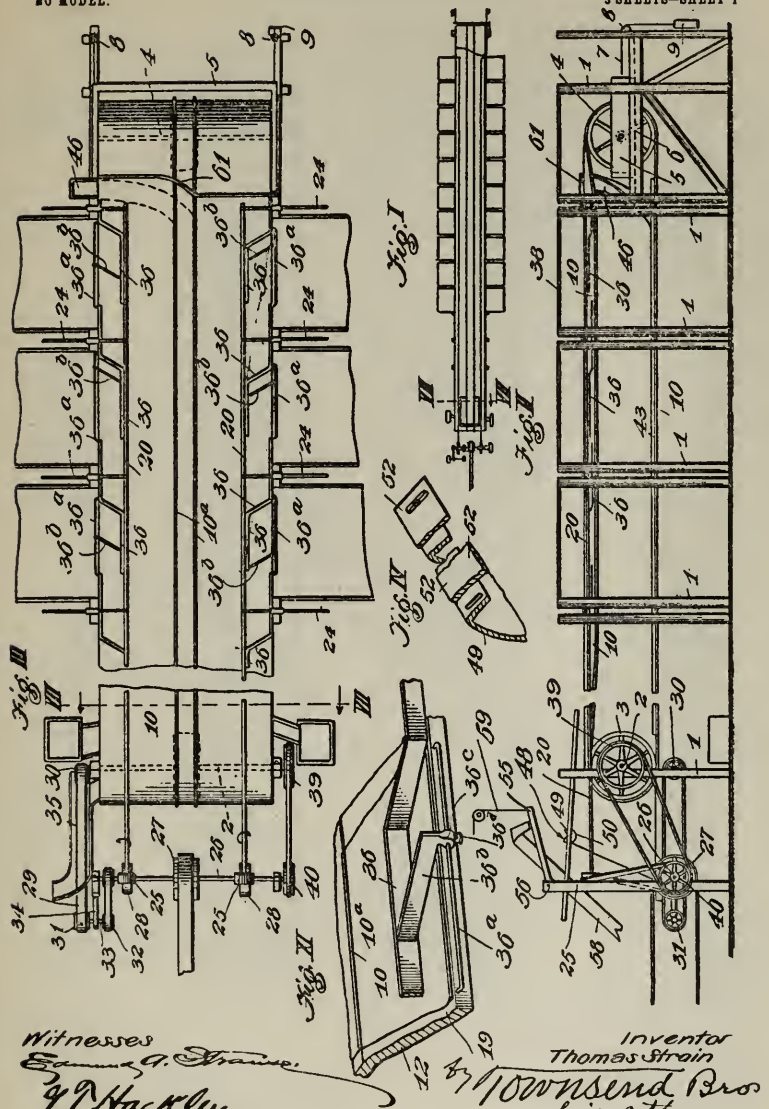
No. 775,015. PATENTED NOV. 15, 1904.

T. STRAIN.

FRUIT GRADER.

APPLICATION FILED JAN. 12, 1903.

NO MODEL. 3 SHEETS—SHEET 1



Witnesses
Edmund A. Strauss.
H. P. Hackley

Inventor
Thomas Strain
by Townsend Bros
his attys

No. 775,015. PATENTED NOV. 15, 1904.

T. STRAIN.

FRUIT GRADER.

APPLICATION FILED JAN. 12, 1903.

NO MODEL 3 SHEETS—SHEET 2

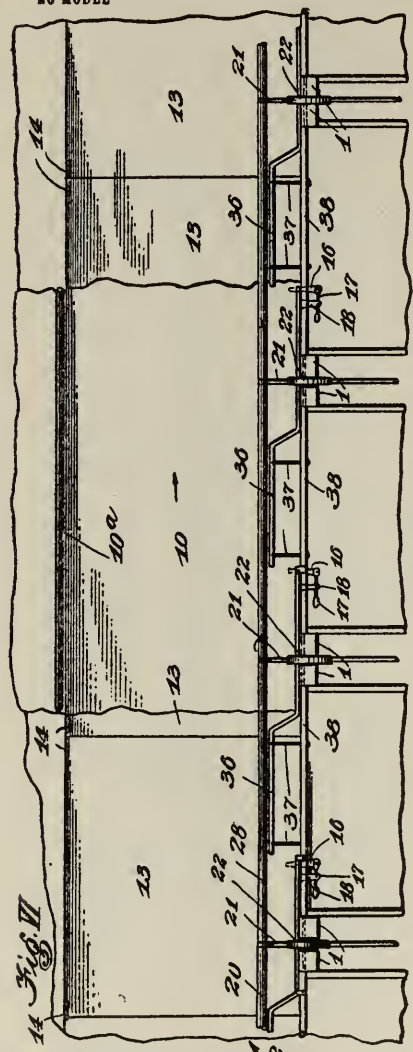


Fig. II

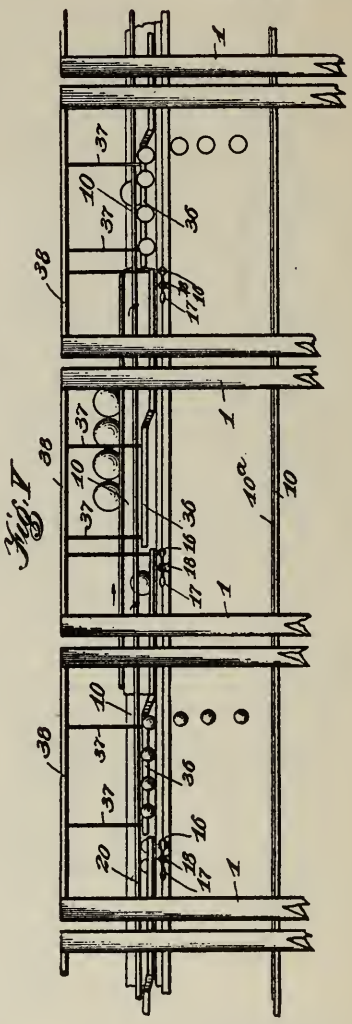


Fig. I

Witnesses
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Atty

No. 775,015. PATENTED NOV. 15, 1904.

T. STRAIN.

FRUIT GRADER.

APPLICATION FILED JAN. 12, 1903.

NO MODEL. 3 SHEETS—SHEET 3

Fig. VII

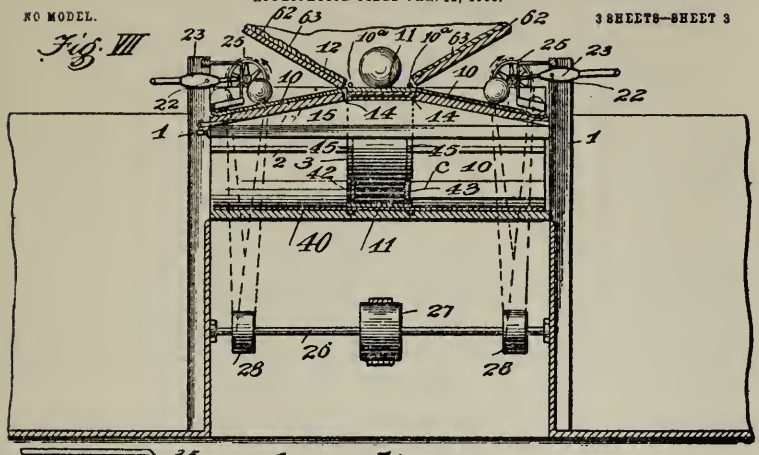


Fig. VIII

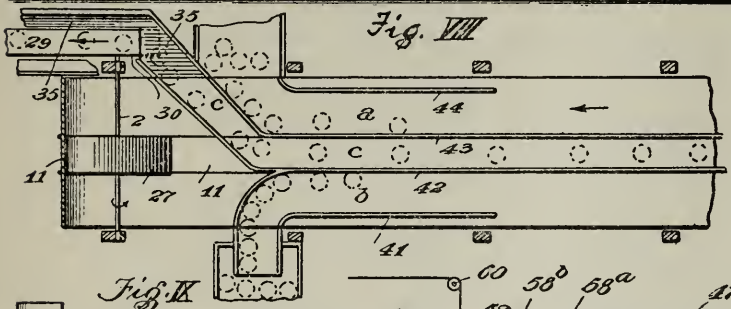


Fig. IX

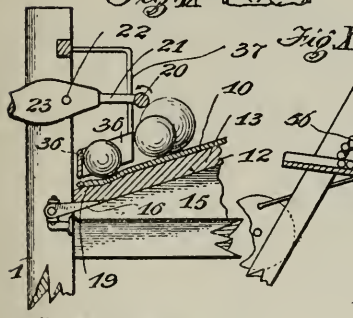


Fig. X

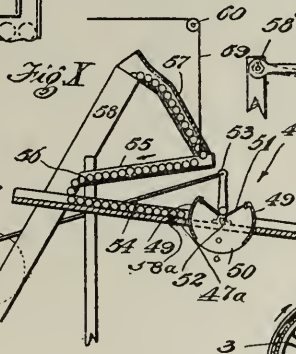


Fig. XI

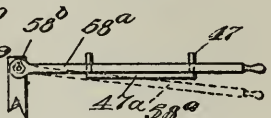
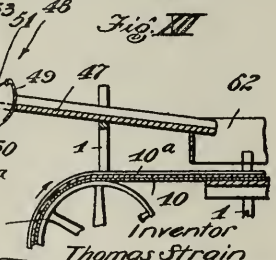


Fig. XII



Witnesses
Samuel A. Stevens.
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Inventor
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by Townsend Bros
his Attys

No 775,015. Patented November 15, 1904.

UNITED STATES PATENT OFFICE.

THOMAS STRAIN, OF PLACENTIA, CALIFORNIA.

FRUIT-GRADER.

SPECIFICATION forming part of Letters Patent No. 775,015, dated November 15, 1904.

Application filed January 12, 1903. Serial No. 138,752. (No model.)

To all whom it may concern:

Be it known that I, THOMAS STRAIN, a citizen of the United States, residing at Placentia, in the county of Orange and State of California, have invented a new and useful Fruit-Grader, of which the following is a specification.

My invention relates to a machine by means of which different sizes of fruit may be gaged and sorted or separated into bins.

One object of my invention is to provide a fruit-grader which will effectively grade the fruit without damaging the fruit.

Another object of my invention is to provide means whereby the fruit will be thoroughly mixed or delivered into each bin in such a way that the several sizes of fruit in each bin are perfectly distributed. This is a valuable feature, for the reason that although the average size of fruit in different bins will vary, still the actual size of fruit delivered into each bin will also vary somewhat.

Briefly, my invention consists of means for conveying the fruit along an inclined surface and means arranged along the inclined surface to hold fruit of certain sizes at certain points on the inclined surface and to allow certain sizes of fruit to escape at certain points along the inclined surface.

Referring to the drawings, Figure I is a diagrammatical plan view which shows the general arrangement of the fruit-grader. Fig. II is a side elevation of the conveyer, showing only a few bins. Fig. III is a plan view of what is shown in Fig. II. Fig. IV is a detail of a fragment of part of the feed-regulator. Fig. V is an enlarged side elevation of a section of the elevator, showing three bins. Fig. VI is a plan view of what is shown in Fig. V. In this view only one side of a portion of the elevator has been illustrated. Fig. VII is an enlarged section taken on the line VII VII, Fig. III. Fig. VIII is a plan view, partially in section, of the lower part of the feeding end of the grader. In this view the lower half of the belt is shown. Fig. IX is a transverse sectional view of a portion of one side of the upper part of the grader. Fig. X is a detail of part of the feeding device. Fig. XI is a perspective view of a guard and adjustable deflector. Fig. XII is a detail of a device for regulating the flow of fruit through the feeding-trough.

1 designates a supporting-frame. The length of the frame will be dependent upon the number of bins employed in the grader. It should be understood that only a few bins are shown in the drawings and that as many bins may be used as desired. Mounted at one end of the frame is a shaft 2, upon which is mounted a pulley 3. At the other end of the frame a pulley 4 is mounted on a shaft journaled in a frame 5, the frame 5 being slidably mounted on horizontal bars 6, supported by the frame 1.

7 is a flexible connection attached to the frame 5 and passes over an antifriction device 8, carried by the frame 1.

9 is a weight carried by the flexible connection 7.

10 is a conveyer-belt which has secured in any suitable manner along it inner middle face a narrow reinforcing strip or belt 11, which latter is mounted upon the pulleys 3 and 4. The conveyer-belt 10 is relatively very much wider than the strip 11.

12 is a table having a middle portion which is horizontal and having sides which are inclined or sloping along each side of the center horizontal part. The central flat part is provided with a slight longitudinal recess in which loosely rides the belt 11. The inclined part of the table 12 is made in sections consisting of a series of hinged leaves 13, each leaf being hinged to the center portion of the table, as at 14.

15 represents cross-bars carried by the frame 1. 16 designates wedges which are interposed between the outer edges of the leaves 13 and the cross-bars 15. Each wedge 16 is connected to a lever 17, the lever 17 being pivoted to a bracket 18. By manipulating the lever 17 and moving the wedges 16 in or out the leaves 13 may be raised or lowered and given a greater or less inclination, as desired.

The belt 10 is supported upon the upper surface of the table 12. Each leaf near its outer edge is provided with a concave depression 19.

20 designates grading-rods arranged along

opposite sides of the grader, each rod being rotatably mounted on adjustable arms 21. Each arm 21 is pivoted to the frame 1, as at 22. Each arm 21 is provided with an enlargement 23, one face or side of which is normally in close contact with the frame 1 to afford sufficient friction for holding the arm 21 in the position in which it is placed, the friction produced being sufficient to hold the arm in the desired position. The grader-rods 20 should be long enough to reach to the end of the conveyer. The grading-rods are comparatively slender, as shown, and are flexible to a considerable extent and are supported at intervals by the arms 21, so that any section of a grading-rod may be adjusted relatively to the conveyer. For instance, an intermediate section may be adjusted to the desired height above the conveyer without disturbing the adjustment of the other sections. When each section of the grading-rods has been adjusted, as desired, a grading-rod may not be straight, but the flexibility of the rods and comparatively slow speed at which they run permit of such adjustment. The general line of a grading-rod is of course inclined to the conveyer, but the arms 21 are provided so that when they are adjusted each section of a rod lying between adjacent arms may be substantially parallel with the conveyer. The grading-rods are provided with pulley 25 at one end.

26 is a driving-shaft mounted on the frame 1 and driven by a pulley 27.

28 represents pulleys mounted on the driving-shaft 26, each of which is connected with a pulley 25 by crossed belts.

The grading-rods 20 revolve in opposite directions, and the movement of the lower face of the rod is always away from the lower plane of the inclined leaves. This movement prevents fruit from being drawn in under the rods and squeezed against the conveyer-belt. The fruit does not pass under the rods until the space reached is just large enough for the fruit to pass through easily.

29 designates an auxiliary conveyer-belt which is mounted on pulleys 30 and 31. The pulley 31 is connected to another pulley, 32, by a shaft 33, which latter is mounted on a bracket 34. The pulley 32 is driven by a belt from the pulley on the shaft 26. Arranged at each side of the belt 29 are sloping side plates forming a trough 35.

36 designates guards which are supported by rods 37, which are suspended from bars 38. The guards 36 are suspended in such a way that they lie close to the conveyer-belt and yet do not touch the belt, and as the fruit passes under the grading-rods at different points it is shunted by the guards 36 into the proper bins. The guards 36 are arranged along each side of the conveyer-belt, one guard for each bin.

36ª represents brackets attached to the edges of the leaves. Mounted on each bracket is an inclined deflector 36ᵇ. The deflector 36ᵇ is provided with a lug 36ᶜ, and the latter is adjustably mounted on the bracket 36ª and clamped thereto by means of a set-screw 36ᵈ. The deflector 36ᵇ may be placed at any desired point along the bracket 36ª, so that fruit will be shunted into the bin at any desired point. This allows the fruit to be delivered into the bin in such a way that it is thoroughly mixed. If the fruit were delivered into the bin direct from under the grading-rods, the size of fruit in the bin at one extreme side would be larger than the size at the other side. To obviate this difficulty, I employ the guards 36 and deflector 36ᵇ, by means of which the fruit is thoroughly mixed in the bin, and no particular size occupies a particular place in the bin, as would be the case were the guards and deflectors not employed.

39 designates a pulley on the shaft 2.

40 designates a pulley on the shaft 26.

The pulleys 40 and 39 are connected by a belt.

41 42 43 44 designate walls which are supported by rods 45. The rods 45 are carried by cross-bars 15. The walls 41, 42, 43, and 44 are suspended above the bottom part or run of the belt 10 in such a way that they lie close to the belt and yet do not touch the belt. These walls provide three troughs *a b c*. Troughs *a* and *b* provide for guiding into suitable bins the fruit that is removed by the sorters from the conveyer-belt. The troughs *a* and *b* are merely of sufficient length to extend along that portion of the length of the grader which is devoted to the sorters. In a fruit-grader which is thirty feet long this space devoted to the sorter may be about one-third. The middle trough *c*, as shown in Figs. II and III, communicates, through the medium of a trough 46, with the upper surface of one side of the conveyer-belt 10. The other end of the trough *c* is offset and terminates in the trough 35.

47 designates an inclined trough arranged over the feeding end of the grader. In the center of the trough 47 is an oscillatory feed-regulator 48, formed of segmental plates 49, which plates are connected together by pieces 50, the feeder being pivotally mounted at 52 to the trough 47.

51 designates plates which are adjustably attached at angles to the segmental plates 49. The plates 51 are spaced apart at their adjacent edges, the space being sufficiently small to retain fruit which it is desired to have pass through the grader and yet will allow fruit which is very much undersized and which it is not desired to grade to drop through the space and be discharged.

The feed-regulator 48 is provided with an upright arm 53, which may be connected with

any rotatable part by means of a rod 54. Arranged above the trough 47 is a tilting table 55, pivoted at 56.

57 is a trough which extends from the upper end of the fruit-elevator 58 to the tilting table 55.

59 is a flexible connection from the free end of the tilting table 55, which passes over a pulley 60 and may be connected with a prime feeding device which is not shown in the drawings. When the tilting table 55 becomes filled with fruit, the weight of the fruit causes the table to tilt downward, which pulls on the flexible connection 59, and the latter controls the action of the prime feeding device. (Not shown in the drawings.) The fruit is discharged from the tilting table 55 into the trough 47 and rolls down the same till it comes in contact with the feed-regulator 48. It stays in that position until the feed-regulator is rocked into such position that the plate 52 is brought into a position that allows the fruit to roll up onto the plate 52 and into the V-shaped portion of the feed-regulator. The feed-regulator after being filled is gradually rocked into the position shown in Fig. X and continues until the fruit in the regulator is discharged therefrom into the lower part of the trough. The fruit in the trough 47 is prevented from entering the feed-regulator by reason of the curved segmental plate 49. Any fruit which has been admitted to the feed-regulator which is undersized will fall through the opening between the two plates 52.

58^a is a bar which is pivoted at 58^b to the trough 47 and lies transversely of the trough, the trough 47 being slotted, as at 47^a, to receive the bar 58^a. By swinging the bar 58^a into or out of the trough the fruit may be stopped or allowed to travel. When the fruit is stopped thereby, the fruit piles up and accumulates on the tilting table, causing the same to operate and shut down the prime feeding device. (Not shown.)

In operation fruit is delivered onto the conveyer-belt 10 from the trough 47. The fruit is carried along on the conveyer-belt 10 between the ridges 10^a, extending longitudinally on the outer face thereof. Sorters who stand along both sides of the grader near the feeding end pick out what fruit is not suitable for packing and place such fruit in the troughs *a* and *b*, and this fruit is conveyed by the lower part of the belt through the troughs *a* and *b* and delivered into suitable bins. The sorters pick off good fruit from between the ridges 10^a and place it on each of the inclined sides of the belt, where the fruit rolls down against the grading-rods 20 and is carried along the grading-rods 20. The space between the grading-rods and the belt 10 gradually varies, so that the larger fruit is carried by the conveyer-belt to the farther end of the grader and the small fruit is allowed to escape under the grading-rods at a point much closer to the feeding end of the machine. Intermediate sizes of fruit will escape under the rods at intermediate places along the rod. It will be observed that by reason of the rotation of the rods 20 the fruit is prevented from becoming pinched between the rods 20 and belt 10, the rotation of the rods being in a direction which does not tend to draw the fruit under the rods. It will be seen that the fruit is carried to the utmost limit as determined by the space which will allow or retain the fruit on the conveyer-belt 10. When a certain size fruit is discharged under the rod 20, which can only occur at clear spaces between consecutive guards 36, it rolls down the inclined belt and rest against the lower section of a guard 36. (See Fig. IX.) When the fruit is in contact with the guard 36, it rests in the concave hollow depression 19.

The guard 36 serves to hold the fruit from being delivered into the bin until the belt has traveled a sufficient distance to bring the fruit to the desired point opposite the bin, at which point the deflector 36^b, which stands in front of the offset inclined part of the next guard, shunts the fruit into the bin. The hollow depression holds the fruit on the conveyer-belt after the fruit has passed under the grading-rods before being shunted by the guards. Fruit that is not removed by the sorters from the central portion of the belt is carried to the farther end of the grader, where it is deflected by means of the grader 61 and delivered into the trough 46, down through which the fruit rolls, being discharged onto the lower part of the belt 10, falling into the trough *c*. The fruit is conveyed back to the feeding end of the grader by the lower part of the belt and is guided by the trough *c* into the trough 35, and from the latter it is delivered onto the auxiliary conveyer-belt 29, which carries it rearward to the elevator 58, the connection between this conveyer and elevator is not shown in the drawings.

The space between the rods 20 and the conveyer-belt may be adjusted in two ways—either by raising or lowering the grading-rods 20 by means of the arms 21, or by raising or lowering the leaves 13 by moving the wedges 16 in or out by manipulation of the levers 17. The latter method is preferable for the reason that it does not throw the grading-rod 20 out of its natural alinement. It should be understood that as the grading-rod 20 is slender it permits of being adjusted within reasonable limits—that is, it permits being thrown out of straight alinement. By raising and lowering the leaves 13 accurate adjustment of space may be secured for each section of the grader. It should be understood that the movement of the leaves or of the rods 20 when being adjusted is very slight, comparatively, and that the guards 36 are arranged a sufficient distance above the conveyer-belt to

allow the desired movement in adjusting the leaves.

Referring to Fig. VII, 62 designates a trough formed of inclined plates provided on their upper surfaces with padding, such as 63, these serve to guide and soften the fall of the fruit from the trough 47 onto the conveyer-belt 10, the oranges in falling strike the padded portion 63, which prevents the fruit being bruised.

It should be understood that I contemplate making such changes and alterations in the herein-described embodiment as will come within the scope of my invention.

What I claim, and desire to secure by Letters Patent of the United States, is—

1. A fruit-grader comprising means for conveying fruit along a definite line of travel, said means being inclined transversely of the line of travel, an inclined grading-rod lying along said line of travel above said conveying means, and means for adjusting intermediate sections of the grading-rod relatively to the grading-rod.

2. A fruit-grader comprising means for conveying fruit along a definite line of travel, said means being inclined transversely of the line of travel, an inclined grading-rod lying along said line of travel above said conveying means, a series of arms supporting said grading-rod at intervals, means for supporting said arms, and means for frictionally holding said arms in a desired position.

3. A fruit-grader comprising means for conveying fruit along a definite line of travel, said means being inclined transversely of the line of travel, a table for supporting said inclined conveying means, an inclined grading-rod lying along said line of travel above said conveying means, means for rotating said grading-rod, and means for supporting said grading-rod embracing an arm pivoted between said pair of bars and a bolt passing through said bars and arm.

4. A fruit-grader comprising means for conveying fruit along a definite line of travel, said means being inclined transversely of the line of travel, a table for supporting said conveying means, a plurality of pairs of upright bars supporting the table, an arm pivoted between each pair of bars, an inclined grading-rod lying along said line of travel above said conveying means, said rod being rotatably mounted in said arms and means for rotating said rod.

5. A fruit-grader comprising traveling means for conveying fruit along a definite line of travel, said means embracing movable opposite inclined portions and flexible means for retaining fruit on each of said inclined portions and lying along said line of travel above said conveying means and having its axis inclined.

6. A fruit-grader comprising traveling means for conveying fruit along a definite line of travel, means embracing movable opposite inclined portions the inclination of each portion being transverse of the line of travel, a plurality of flexible inclined grading-rods, each rod lying along said line of travel above said conveying means, and means for rotating said grading-rods.

7. A fruit-grader comprising traveling means for conveying fruit along a definite line of travel, means embracing movable opposite inclined portions, the inclination of each portion being transverse of the line of travel, a plurality of flexible inclined grading-rods, each grading-rod lying along said line of travel above said conveying means and means for rotating said grading-rods in opposite directions.

8. A fruit-grader comprising traveling means for conveying fruit along a definite line of travel, means embracing movable opposite inclined portions, the inclination of each portion being transverse of the line of travel, a plurality of flexible grading-rods, each grading-rod lying along said line of travel above said conveying means, and means for rotating said grading-rods in opposite directions, the directions of rotation of each rod being such that the moving under surface of each rod is substantially directed away from the lower plane of its adjacent inclined portion of said conveying means.

9. A fruit-grader comprising means for conveying fruit along a definite line of travel embracing an endless belt, means for supporting opposite sides of said belt in symmetrical inclined positions, means for gaging fruit on said inclined portions of said belt and lying along said line of travel above said belt, said latter means having their axes inclined in the same direction.

10. A fruit-grader comprising means for conveying fruit along a definite line of travel, said means embracing an endless belt, means for supporting opposite sides of said belt in symmetrical inclined positions, a plurality of grading-rods, each rod lying along said line of travel above said belt, both grading-rods being inclined in the same direction, and means for rotating said grading-rods.

11. A fruit-grader comprising means for conveying fruit along a definite line of travel, said means embracing an endless belt, means for supporting opposite sides of said belt in symmetrical inclined positions, a plurality of grading-rods, each grading-rod lying along said line of travel above said belt, both grading-rods being inclined in the same direction, and means for rotating said grading-rods, the direction of movement of both rods being such that the moving under surface of each rod is substantially directed away from the lower plane of the inclined parts of said belt.

12. A fruit-grader comprising a frame, a table consisting of a horizontal central portion having a plurality of opposite hinged leaves,

means for supporting said leaves in a desired position, an endless belt, means for propelling said belt longitudinally over said table, and means for retaining fruit on said belt and lying along said line of travel above said belt and having its axis inclined.

13. A fruit-grader comprising a frame, a table consisting of a horizontal central portion having a plurality of opposite hinged leaves, means for supporting said leaves in a desired position, an endless belt, means for propelling said belt longitudinally over said table, means for retaining fruit on said belt and lying along said line of travel above said belt and having its axis inclined, and means for adjusting each of said leaves independently of the others.

14. A fruit-grader comprising a frame, a table consisting of a horizontal central portion having a plurality of opposite hinged leaves, means for supporting said leaves in a desired position, an endless belt, means for causing said belt to travel longitudinally over said table, means for gaging fruit on said belt, and lying along said line of travel above said belt and having its axis inclined, cross-bars on said frame under each leaf, a wedge interposed between each leaf and each cross-bar and means for adjusting said wedges.

15. A fruit-grader comprising a frame, a table consisting of a horizontal central portion having a plurality of opposite hinged leaves, means for supporting said leaves in a desired position, an endless belt, means for causing said belt to travel longitudinally over said table, and means for retaining fruit on said belt, and lying along said line of travel above said belt and having its axis inclined, a plurality of cross-bars on said frame, a cross-bar being under each leaf, a wedge interposed between each leaf and cross-bar, and a plurality of levers pivoted to the frame, each lever being connected to a wedge.

16. A fruit-grader comprising a frame, a table supported on the frame consisting of a horizontal central portion having a plurality of pivoted leaves, a pulley rotatably mounted at one end of said table, a frame slidably mounted on horizontal bars at the other end of said first-mentioned frame, a pulley rotatably mounted on said slidable frame, a belt carried by said pulleys, the upper half of said belt lying along and supported upon said table and leaves, and means for drawing said pulley in a direction away from said first-named pulley and thereby placing said belt under tension.

17. A fruit-grader comprising a frame, a table supported on the frame consisting of a horizontal central portion having a plurality of leaves, a pulley rotatably mounted at one end of said table, a frame slidably mounted on horizontal bars at the other end of said first-mentioned frame, a pulley rotatably mounted on said slidable frame, a belt carried by said pulleys, the upper half of said belt lying along and resting upon said table and leaves, a flexible connection connected to said slidable frame, a sheave supporting said flexible connection, a weight carried by the end of said flexible connection.

18. A fruit-grader comprising means for conveying fruit along a definite line of travel, said means being inclined transversely of the line of travel, an inclined grading-rod lying along said line of travel above said conveying means, means for rotating said grading-rod, and stationary guards and deflectors mounted above said conveying means.

19. A fruit-grader comprising means for conveying fruit along a definite line of travel, said means being inclined transversely of the line of travel, an inclined grading-rod lying along said line of travel above said conveying means, means for rotating said grading-rod, and stationary guards mounted above said conveying means, each guard comprising offset walls, each wall lying in different vertical planes, the inner wall lying adjacent said grading-rod.

20. A fruit-grader comprising means for conveying fruit along a definite line of travel, said means being inclined transversely of the line of travel, an inclined grading-rod lying along said line of travel above said conveying means, means for rotating said grading-rod, guards for said conveying means, brackets connected to the frame and supporting said guards.

21. A fruit-grader comprising means for conveying fruit along a definite line of travel, said means being inclined transversely of the line of travel, an inclined grading-rod lying along said line of travel above said conveying means, means for rotating said grading-rod, and stationary guards mounted above said conveying means and a deflector adjustably mounted near said guard and movable along said guard.

22. A fruit-grader comprising means for conveying fruit along a definite line of travel, said means being inclined transversely of the line of travel, an inclined grading-rod lying along said line of travel above said conveying means, means for rotating said grading-rod, and stationary guards mounted above said conveying means, a deflector, a perforated lug thereon, a horizontal bracket mounted on said frame and parallel with said guard, said perforated lug being mounted on said bracket and a set-screw through the lug and bearing against the bracket, said deflector-plate lying at an angle to said guard.

23. A fruit-grader comprising means for conveying fruit along a definite line of travel, said means being inclined transversely of the line of travel, an inclined grading-rod lying along said line of travel above said conveying means, means for rotating said grading-rod, stationary guards mounted above said con-

veying means, a deflector with a perforated lug thereon, a horizontal bracket mounted on said frame and parallel with one of said guards, said perforated lug being mounted on said bracket and a set-screw through the lug and bearing against the bracket said deflector lying at an angle to said guard, and parallel with the offset part of said guard.

24. A fruit-grader having a frame, a table consisting of a depressed horizontal central portion, a plurality of leaves hinged on opposite sides, an endless belt movable along the upper surface of said table and leaves, and a relatively narrow reinforcing-belt on the inside of said main belt, said reinforcing-belt lying within said depressed central portion.

25. A fruit-grader having a frame, a table having a depressed horizontal central portion, a plurality of leaves hinged on opposite sides of the central portion, an endless belt movable along the upper surface of said table and leaves, a relatively narrow reinforcing-belt on the inside of said main belt, said reinforcing-belt lying within said depressed central portion, and a pair of opposite ridges on the outside face of said conveyer-belt.

26. A fruit-grader having a frame, a table mounted on the frame embracing a plurality of opposite hinged leaves, each leaf being provided with a concave depression along its outer edge, a conveyer-belt mounted to move along the upper surface of said table and leaves, a pair of grading-rods arranged along opposite sides of the leaves and inside of said depression, and means for rotating said grading-rods.

27. A fruit-grader comprising means for conveying fruit along a definite line of travel, said means being inclined transversely of the line of travel, a plurality of flexible inclined grading-rods lying along said line of travel above said conveying means, means for rotating said grading-rods, means for feeding fruit to one end of said conveying means, and a deflector at the other end of said conveying means.

28. A fruit-grader comprising means for conveying fruit along a definite line of travel, said means being inclined transversely of the line of travel, an inclined grading-rod lying along said line of travel above said conveying means, means for rotating said grading-rods, means for feeding fruit to one end of said conveying means, a deflector at the other end of said conveying means, a trough having a mouth arranged adjacent said deflector, said trough extending below the upper part of the belt, and having its discharge-spout arranged above the central part of the lower part of the conveyer means.

29. A fruit-grader comprising means for conveying fruit along a definite line of travel, said means being inclined transversely of the line of travel, an inclined grading-rod lying along said line of travel above said conveying means, means for rotating said grading-rod, means for feeding fruit to one end of said conveying means, means at the other end of said conveying means for transferring fruit from the retaining portion of said conveying means, a longitudinal trough mounted above the retaining or lower part of said conveying means.

30. A fruit-grader comprising means for conveying fruit along a definite line of travel, said means being inclined transversely of the line of travel, an inclined grading-rod lying along said line of travel above said conveying means, means for rotating said grading-rod, means for feeding fruit to one end of said conveying means, means at the other end of said conveying means for transferring fruit to the returning portion of said conveying means, a longitudinal trough mounted above the returning or lower part of said conveying means, an auxiliary conveyer connecting with the rear end of said last-named trough, said auxiliary comprising an endless belt mounted on a pair of pulleys, and means for driving said pulleys.

31. A fruit-grader comprising a frame, a pulley mounted in each end of said frame, a belt mounted on said pulleys, a conveyer-belt connected to said first-named belt, means for supporting the outer portions of said conveyer-belt in inclined positions, a pair of grading-rods mounted above said conveyer-belt, each rod being near the outside edge of the conveyer-belt and slightly above the belt, the space between the rods and the belt at the feeding end of said belt being less than the distance between said rods and said belt at points beyond said feeding end, and means for rotating said rods in opposite directions.

32. A fruit-grader comprising means for conveying fruit along a definite line of travel, said means being inclined transversely of the line of travel, an inclined grading-rod lying along said line of travel above said conveying means, means for rotating said grading-rod, means for feeding fruit to said conveying means comprising an inclined trough, an oscillatory feed-regulator mounted transversely of said trough, said feed-regulator comprising a pair of segmental curved plates concentric with the axis of said feed-regulator, a pair of flat plates mounted on the upper edges of said curved plates, the free edges of said flat plates being at angles to each other, and means for oscillating said feed-regulator.

33. A fruit-grader comprising means for conveying fruit along a definite line of travel, said means being inclined transversely of the line of travel, an inclined grading-rod lying along said line of travel above said conveying means, means for rotating said grading-rod, means for feeding fruit to said conveying means comprising an inclined trough, an oscillatory feed-regulator mounted transversely

of said trough, said feed-regulator comprising a pair of segmental curved plates concentric with the axis of said feed-regulator, a pair of flat plates mounted on the upper edges of said curved plates the free edges of said flat plates being at angles to each other, and means for oscillating said feed-regulator, the axis of said feed-regulator being substantially in a line with the bottom of said inclined trough.

34. A fruit-grader comprising means for conveying fruit along a definite line of travel, said means being inclined transversely of the line of travel, means for grading fruit lying along said line of travel above said conveying means and having its axis inclined, means for feeding fruit to said conveying means embracing an inclined trough, an oscillatory feed-regulator extending transversely of said inclined trough, means for oscillating said feed-regulator, and a balanced tilting table mounted above said inclined trough.

35. A fruit-grader comprising a frame, a table supported by the frame embracing a horizontal portion, inclined hinged leaves, a pulley mounted on each end of the frame, a belt carried by the belt, said belt movable along over the upper faces of said table and leaves, means for feeding fruit to the upper face of said belt at one end, means at the other end of said belt for transferring fruit from the upper face of the belt to the lower part of the belt, a trough extending along the upper side of the lower part of said belt, said trough being slightly above the belt and at its rear end being offset and extending beyond the edge of the belt, and a pair of relatively short auxiliary troughs parallel with the main part of the longitudinal trough and adjacent the offset of the main trough.

36. A fruit-grader comprising means for conveying fruit along a definite line of travel, said means being inclined transversely of the line of travel, an inclined grading-rod lying along said line of travel above said conveying means, means for rotating said grading-rod, a series of bins arranged along each side of the conveying means and means for adjusting portions of said grading-rod to various heights above the conveying means adjacent to each bin.

37. A fruit-grader comprising means for conveying fruit along a definite line of travel, said means being inclined transversely of the line of travel, an inclined grading-rod lying along said line of travel above said conveying means, means for rotating said grading-rod, means for supporting said conveying means embracing a table consisting of a central horizontal portion and a plurality of inclined hinged leaves arranged along each side of the horizontal part, a plurality of bins for the respective leaves, a bin being arranged adjacent each leaf, means for adjusting each leaf independently of the others, a plurality of guards for the respective bins, each of said guards extending considerably each side of the partition between two bins.

38. A fruit-grader comprising means for conveying fruit along a definite line of travel, said means being inclined transversely of the line of travel, an inclined grading-rod lying along said line of travel above said conveying means, means for rotating said grading-rod, means for feeding fruit to said conveying means comprising an inclined trough, an oscillatory feed-regulator rotatably mounted in said inclined trough, said feed-regulator comprising a pair of segmental curved plates concentric to the axis of said feed-regulator, a pair of flat plates, each plate being provided with elongated slots, screws passing through said slots and fastening said flat plates to said curved plates, and means for rocking said feed-regulator.

39. In a device of the character described, means for feeding fruit thereto consisting of an inclined trough, an oscillatory feed-regulator arranged transversely of said trough, said feed-regulator comprising a pair of curved segmental plates concentric with the axis of said feed-regulator, and a pair of flat plates adjustably secured at angles to said curved plates, and means for rocking said feed-regulator.

40. In a fruit-grader, a frame, a driving-shaft mounted at one end of the frame, a slidable regulating-frame mounted on horizontal bars of the main frame, a shaft mounted on said slidable frame, a pulley mounted on the latter shaft, a pulley mounted on the driving-shaft, a conveyer-belt mounted on the two pulleys, a second shaft mounted on the frame, a pair of grading-rods extending longitudinally of said conveyer-belt, each rod being spaced slightly above the belt and inclined, a pair of pulleys on the second driving-shaft, a pulley on the rear end of each grading-rod, a belt connecting each of said pulleys with pulleys on the second driving-shaft, an auxiliary conveyer comprising a pair of pulleys, a belt connecting said pulleys, said auxiliary conveyer lying parallel to said conveyer-belt, bins arranged along each side of the conveyer-belt, guards in front of each bin, said guards embracing a plate offset to form two parallel planes, a horizontal bracket mounted on the outer edge of a leaf, an adjustable deflector comprising a plate provided with a perforated lug, said lug being slidably mounted on said bracket and a set-screw passing through said lug and fastening the same to said bracket.

41. In a fruit-grader, a frame, a driving-shaft mounted at one end of the frame, a slidable regulating-frame mounted on horizontal bars of the main frame, a shaft mounted on said slidable frame, a pulley mounted on the driving-shaft, a traveling belt mounted on the two pulleys, a second driving-shaft mounted on the frame, a pair of grading-rods extending longitudinally of said belt, each rod lying

near and spaced slightly above the belt, each rod being inclined, a pair of pulleys on the second driving-shaft, a pulley on the rear end of each grading-rod, a belt connecting each of said pulleys with pulleys on the second driving-shaft, an auxiliary conveyer comprising a pair of pulleys and a belt connecting said pulleys, said auxiliary conveyer lying parallel to said conveyer-belt, bins arranged along each side of the conveyer-belt, guards in front of each bin, a guard embracing a plate offset to form two parallel planes, a plurality of brackets, a bracket being mounted on the edge of each leaf, an inclined deflector-plate having a perforated lug, said lug being mounted on a bracket, the plane of said plate being parallel to the offset angular portion of the guard near which said deflector-plate is attached.

In testimony whereof I have signed my name to this specification, in the presence of two subscribing witnesses, at Los Angeles, in the county of Los Angeles and State of California, this 7th day of January, 1903.

THOMAS STRAIN.

Witnesses:

GEORGE T. HACKLEY,

JULIA TOWNSEND.

[Defendant's Exhibit No. 7.]

[Endorsed]: U. S. District Court, No. 1562. Defendant's Exhibit No. 7. Filed Aug. 7, 1914. ————, Referee.

Filed Oct. 3, 1914. Wm. M. Van Dyke, Clerk. By Chas N. Williams, Deputy.

F. STEBLER.

DISTRIBUTING APPARATUS.

APPLICATION FILED MAY 12, 1908.

943,799. Patented Dec. 21, 1909.

2 SHEETS—SHEET 1.

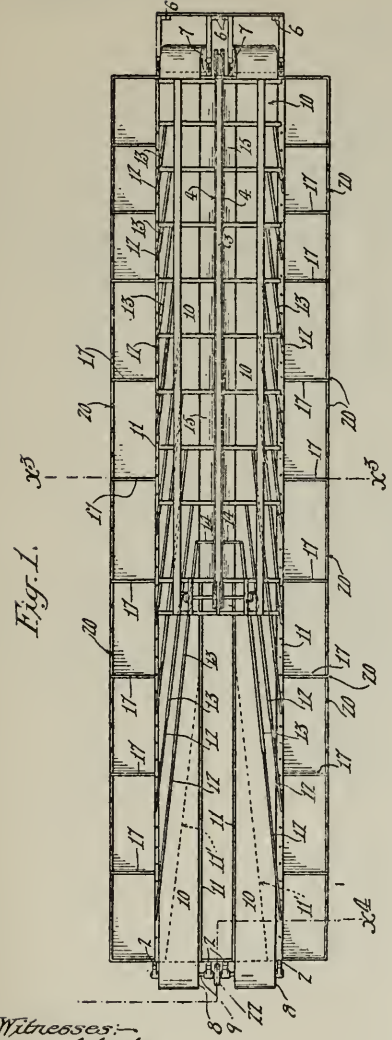

Fig. 1.

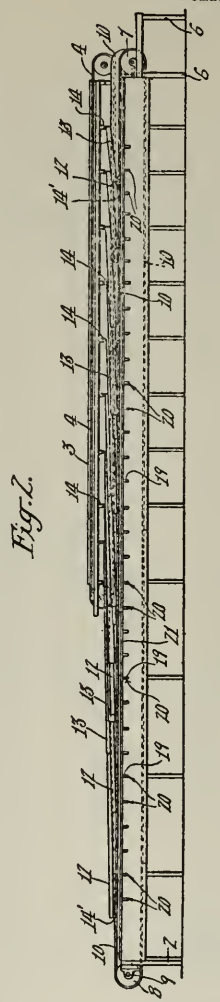

Fig. 2.

Witnesses:—
Frank Lahrakam
Louis W Gratz

Inventor;
Fred Stebler.
by Townsend Lyon & Hardy
his Attys

F. STEBLER.

DISTRIBUTING APPARATUS.

APPLICATION FILED MAY 12, 1908.

943,799. Patented Dec. 21, 1909.

2 SHEETS—SHEET 2.

Fig. 3.

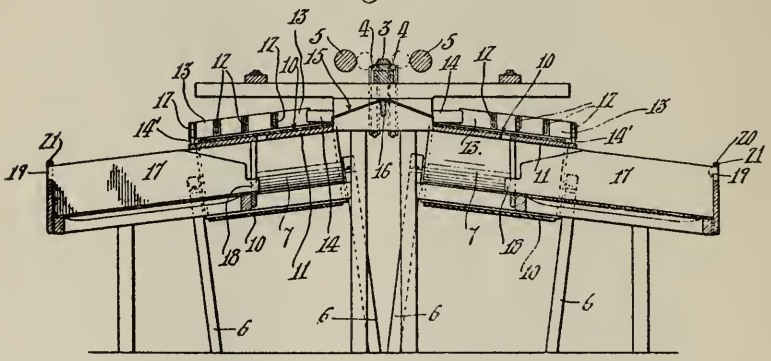

Fig. 4.

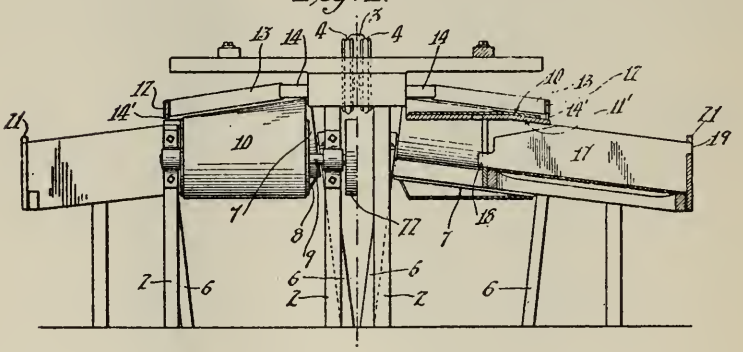

Fig. 5.

Witnesses:-
Frank L. Graham
Louis W. Gratz.

Inventor:
Fred Stebler.
by Townsend Lyon & Hassler
His Attys.

UNITED STATES PATENT OFFICE.

FRED STEBLER, OF RIVERSIDE, CALIFORNIA.

DISTRIBUTING APPARATUS.

943,799. Specification of Letters Patent. **Patented Dec. 21, 1909.**

Application filed May 12, 1908. Serial No. 432,548.

To all whom it may concern:

Be it known that I, FRED STEBLER, a citizen of the United States, residing at Riverside, in the county of Riverside and State of California, have invented a certain new and useful Distributing Apparatus, of which the following is a specification.

This invention relates to means for carrying or distributing fruit, and is more particularly designed for use in connection with a fruit sizer or grader, and has for its general object the provision of simple and efficient means whereby the several grades or sizes of fruits, such, for example, as oranges, may be conducted to wide bins suitably spaced along the floor of a packing house so as to provide sufficient room at the sides of the bins for the fruit packers to work.

Another object of the invention is to provide a suitable distributing apparatus in connection with a short or small grader or sizer, thus enabling the use of a short sizer or grader and still deliver the separated or sized fruit in bins of such width as to provide easy access thereto for the packers.

In packing fruit, such, for instance, as oranges, it is very desirable to have the sized or graded fruit delivered in wide bins, so that two or more packers may work at the side of each bin, as it has been found that where fruit is being separated or graded it is liable to run mainly to two or three different sizes. It is much desired, therefore, to use wide bins which will enable two, or even more, packers to work at the side of a given bin in wrapping the fruit in papers and packing the same in the boxes.

Heretofore it has been necessary either to provide a very large or long fruit grader or sizer, so as to conduct the several grades of fruit some distance along the grader before being discharged into the bins, or to utilize smaller bins. With this invention it is possible to use a relatively short grader or sizer and utilize a distributing conveyer, and to carry the separated and sized fruit to bins of the desired width extended much beyond the length of the grader and arranged at the sides of the conveyer.

With these and such other objects in view as shall appear from the hereinafter contained description of the apparatus and its operation, the invention consists in the provision, in connection with a fruit sizer or grader such, for example, as the "California grader" of Letters Patent of the United States to James Ish No. 458,422, dated August 25, 1891, or any other suitable grader, of a horizontally traveling conveyer so arranged that the conveyer is tilted sidewise so as to extend slightly downward from the side of the grading or sizing machine, and in the provision, in connection with such conveyer, of guiding means arranged along the conveyer and in suitable relation to the several grading discharges of the separating means as to form ways through which the separated fruit is carried by said conveyer and thereby delivered to suitable bins arranged below and along such conveyer.

The invention consists further in the provision of means whereby such guiding means may be adjusted to deliver the given grade or size of fruit, either to any particular portion of the bin or to any one of several successive bins, so that in case the fruit being sized or graded runs very heavily of a given size or grade, such fruit may be delivered into a series of bins, thus enabling a large number of packers to have ready access to that size or grade of fruit and handle the fruit and pack the same as rapidly as graded or sized.

A further object of the invention is to provide in connection with such fruit grader or sizer, and such conveyer and guiding means, removable and adjustable partitions in the bins so that the width thereof may be varied to suit the requirements.

By thus providing bins whose longitudinal extension may be adjusted with respect to the longitudinal extension of the conveyer of the distributing apparatus, it is possible to provide the necessary bin room for all of the different sizes or grades of the fruit regardless of the run of the fruit. In packing oranges it is often found that the run of the fruit is particularly heavy to one or two given grades or sizes and it is essential in practical use to be able to provide sufficient bin room for the sizes or grades of which there are the greatest number of oranges in a given run. This has been found to be one of the great difficulties which have heretofore existed with all apparatus where machinery has been used in sizing or grading oranges, and it is one of the important objects of this invention to provide means which will accomplish this result without interfering with the grading or

sizing and at the same time permit the compact installation of the machinery and the ready access to the bin room by the packers.

Further objects and ends to be attained will be apparent from the construction and operation of my distributing apparatus as hereinafter described and shown in the drawings, wherein I have shown one embodiment of the invention, it being apparent that many modifications may be made without departing from the spirit or scope of the invention.

The invention will be more readily understood by reference to the accompanying drawings forming a part of this specification, and in which—

Figure 1 is a plan view of a distributing apparatus embodying my invention, the same being shown in connection with a double or two sided fruit grader or sizer, the fruit grader or sizer indicated in the drawings being the well known "California grader", the main features and principles of which are set forth in the Ish patent No. 458,422 before referred to, but, as indicated, instead of a flat belt, a round rope belt traveling in a groove is shown as the same has ordinarily been used in such California grader; and the apparatus being duplicated to discharge fruit on both sides of such double grader. Fig. 2 is a side elevation of such apparatus. Fig. 3 is a cross sectional view on the line x^3—x^3 Fig. 1. Fig. 4 is a cross sectional view on the line x^4— Fig. 1. Fig. 5 is an enlarged, detail view of one of the guiding means, showing the telescopic construction thereof and manner of pivoting the same upon the supports thereof on the frame of the machine.

In the preferred form of the invention and in the embodiment shown in the drawings, the fruit grader or grading is mounted upon suitable standards 2 in the ordinary or any preferred manner, and such fruit grader is made up of a longitudinal divider 3 provided with a groove in which the grading belt or rope 4 travels. 5 (Fig. 3) indicates the grading roller. The construction of this longitudinal divider, grading rope and grading roller is commonly known in the art and is illustrated in patent to Robert Strain No. 730,412 of June 9, 1903, and I have, therefore, considered it not essential to more fully illustrate the same in the drawings herein. Said grading element is adjusted to deliver or discharge fruit of different grades at different longitudinal portions thereof.

As indicated, the grading rope 4 is carried by suitable sheaves suitably mounted and driven. As shown in the drawings, two grading ropes and two grading rollers 5 are shown in the drawings, thus forming a double or two sided machine. As each side, however, is simply a duplicate of the other, I will describe only one of the two fruit distributing apparatus, the other being a duplicate. The fruit distributing means comprises supporting and guiding means, namely, the conveyer 10, and guide means 12, 13, arranged alongside of the grading element and adjusted to receive the fruit therefrom and to deliver the same at longitudinally distributed points, for example to a series of bins. The machine is of especial advantage in delivering to a series of bins where longitudinal extension is greater than that of the grading element, thereby giving more room for the packers, and for that purpose the distributing means is constructed so that its delivery portion is of greater longitudinal extension than the grading element. At one end of the frame of the machine I provide suitable standards 6 which, as shown, are mounted at an incline or angle so that the sheave 7 carried thereby is mounted so as to be inclined downwardly away from the grading element. The other end of the machine is provided with a sheave 8 whose axis or shaft 9 is arranged horizontally in suitable bearings in the standards 2 of the frame.

As indicated best in Fig. 1 of the drawings, the longitudinal traveling conveyer or belt 10 is carried along under the grading element at such inclination, *i. e.*, inclined downwardly away from the gradeway formed by the traveling belt and grading roller, but arranged under the same so that the fruit discharged from such gradeway falls onto the inclined traveling conveyer. The upper run of the belt or traveling conveyer 10 is supported throughout the length of the machine by a bed 11 which extends at an angle inclined downwardly from the grading element toward the bins the width of the belt, and at a point beyond the length of the grading element I provide a hip 11′ in this bed 11 underneath the traveling conveyer and adapted to bring the conveyer down into a horizontal position so that the belt or conveyer is delivered upon the sheave or pulley 8 in a horizontal position crosswise of the belt, thus providing for the belt traveling upon the sheaves 7 and 8 and preventing the same running off therefrom. At distances along the frame of the apparatus, corresponding to the several grades or sizes of fruit arranged to be discharged from the grading element, I provide a series of guiding means preferably made up in two sections 12, 13, the section 13 being pivotally mounted upon suitable bars or studs 14 of the frame of the machine. The section 13 is preferably of such form as to receive within it the section 12 so that the section 12 may be drawn out or pushed back within the section 13 so as to bring the end of the guiding means at any point along the bin to which it is desired to deliver the

given grade of fruit. The front end of the section 12 of such guiding means is provided with a socket in which a suitable pin 14' may be placed, such pin being also inserted in one of the holes 15 along the edge of the bed 11. It is thus seen that by extending or contracting the telescopic guiding means, the point of delivery of the fruit from the belt may be adjusted as desired. In general, when the series of bins is longer than the grading element, the guides 12, 13 will diverge outwardly and will all be directed obliquely forward and outward. Underneath the grading element I arrange a canvas 15 upon which the fruit from the grading element is adapted to drop or be delivered and by which such fruit is directed onto the traveling conveyer 10. Where a double grader is used, this canvas preferably extends from a point at the inner edges of the traveling conveyers 10 over a suitable support 16 arranged below the longitudinal divider 3. Underneath the apparatus and extending out beyond the sides thereof, I arrange a suitable frame adapted to receive the usual canvas false bottom. This frame is provided with a series of removable partitions 17 preferably so arranged that the position of the partitions may be varied as desired to provide fruit receiving bins positioned with respect to the grading element as desired and thus made of adjustable width so that bins for a particular grade may be provided of the size corresponding to the run of the fruit. As shown in the drawings, these adjustable partitions 17 are provided with portions 18 adapted to be inserted in slots formed in the back wall of the bin frame, there being a suitable number of such back slots to provide suitable amount of adjustment. The front ends of the partitions 17 are provided with a portion 19 adapted to be inserted in slots 20 on the front wall of the bin frame. Preferably the removable partitions are held in place by a strip 21 lying upon the front wall of the bin frame and secured in any suitable manner. The conveyers 10 are driven by driving one of the pulleys or sheaves 7, 8 in the ordinary or any preferred manner such, for instance, as a pulley or sheave 22 from which a belt may pass to any suitable source of power. By thus providing means whereby the longitudinal extension of the bins, with respect to the conveyer, may be adjusted to suit the run of the fruit, the bin room and the distribution of the sized fruit is wholly within the control of the operator of the apparatus, and it is possible to so deliver the fruit that immediate and ready access can be had thereto by packers in sufficient number to readily and quickly handle and pack the sized fruit.

In operation the fruit being discharged from the grading element onto the canvas 15 rolls onto the traveling conveyer between two of the adjustable guiding means which form a trough for the travel of the fruit. As the conveyer is inclined downwardly from the grading element and toward the bins, the longitudinal movement of the belt, assisted by gravity, carries the fruit through such trough and discharges the same at the end of the guiding element. It is readily seen that by this arrangement the fruit may be delivered to any portion of the bin as desired, and wide bins may be used so that a large number of packers may work at any one bin.

It is much preferable to slightly incline the conveyer 10 downward toward the bins. If the conveyer 10 is arranged horizontal and not inclined, the fruit must be forced into contact with the guiding means 12, 13, and this forcible and continuous contact will cause abrasion of the tender skins of fruit, such as oranges, and cause the rapid decay thereof. By inclining the conveyer the downward pitch is utilized to cause the oranges to roll toward the outer or discharge edge of the conveyer preventing the continued forcible contact with the guiding means which would occur were the conveyer flat or horizontal in cross section. When the conveyer is arranged flat the oranges are carried to the guiding means at the rear or most advanced side of the chute thereby formed and the continued movement of the conveyer holds the oranges in forcible contact against such guiding means as the oranges are carried across the width of the belt along the guiding means.

Having described my invention, I claim:—

1. The combination with a fruit grading element constructed to deliver fruit at different longitudinal portions, of traveling supporting and distributing means extending laterally from the grading element and inclined downwardly away therefrom, the longitudinal extension of the delivery portion of the said distributing means being greater than the longitudinal extension of the grading element.

2. In combination with a grading element constructed to deliver fruit at different longitudinal portions, a distributing apparatus therefor comprising a conveyer traveling longitudinally of the grading element, and guiding means arranged along the conveyer forming chutes to guide the fruit and bins arranged along the length of said conveyer and at the sides thereof.

3. The combination with a grading element adapted to deliver graded fruit at different longitudinal portions of the element, a traveling conveyer extending longitudinally under said grading element and extending beyond the end thereof a series of bins whose longitudinal extension is greater than the longitudinal extension of the grad-

ing element arranged along the side of said conveyer, and guiding means for guiding the fruit along said conveyer and from the grading element to the series of bins.

4. The combination with a grading element and a series of bins, of a conveyer traveling longitudinally under the grading element and along the side of the series of bins, and guiding means arranged along the conveyer to guide the fruit to the bins, said guiding means diverging toward the bins.

5. In combination with a fruit grader comprising a suitably mounted member and a traveling belt arranged adjacent to said member so as to form the way or chute, for the fruit, a series of bins whose longitudinal extension is greater than the longitudinal extension of the grader, a traveling conveyer arranged under said fruit grader and extending at the side of said series of bins, guiding means for guiding the fruit along said conveyer to said bins, and means for adjusting the longitudinal position of the outer ends of said guiding means, and thereby determine the portion of said bins to which the graded fruit is delivered.

6. A distributing apparatus comprising, in combination with a grading element, a horizontally traveling conveyer inclined downward away from said grading element, bins arranged below and along said conveyer, and guiding means arranged along the conveyer providing chutes for directing fruit to the bins.

7. In combination with a fruit grader comprising a graduated rotary member and a traveling endless belt forming the way or chute for the fruit to travel along and thereby be graded by gravity, a traveling conveyer arranged thereunder and of greater length than said grader, a series of bins arranged at the side of said conveyer and means in conjunction with said conveyer for directing the fruit along said conveyer to the respective bins.

8. In combination with a fruit grader comprising a graduated rotary member and a traveling endless belt arranged adjacent thereto and forming therewith the grading way or chute for the fruit to pass along and be graded by gravity, a traveling conveyer arranged thereunder, a series of bins arranged along the side of said conveyer, an adjustable guiding means arranged along the conveyer and forming a chute for directing the graded fruit from the point of discharge from said conveyer into said bins, said guiding means being adjustable to shift the point of discharge longitudinally of the conveyer.

9. In combination with a grader comprising a graduated rotary member and a traveling endless belt arranged adjacent thereto and forming in conjunction therewith the way, or chute, for the fruit to pass along and be separated or assorted by gravity, a distributing apparatus for a fruit grader or sizer comprising a horizontally traveling conveyer, a pulley for said conveyer mounted on an inclined axis and a second pulley mounted on a horizontal axis, the conveyer being extended between and passing over said pulleys, a bed supporting the upper run of said conveyer and provided with a hip over which conveyer travels as it approaches said horizontal pulley, and guiding means arranged along the conveyer forming chutes for the fruit.

10. The combination with a fruit grading element and a series of bins, of a distributing apparatus therefor, comprising a horizontally traveling conveyer, a pulley for said conveyer mounted on an inclined axis and a second pulley mounted on a horizontal axis, the conveyer being extended between and passing over said pulleys, a bed supporting the upper run of said conveyer and provided with a hip over which conveyer travels as it approaches said horizontal pulley, and guiding means arranged along the conveyer forming chutes for the fruit.

11. The combination of a fruit grading element and a series of bins, the walls of said bins being adjustable longitudinally of the series, and a distributing apparatus comprising a conveyer traveling longitudinally between the fruit grading element and the bins, and guide means arranged along the conveyer and forming chutes for guiding the fruit from said conveyer to said bins, said guide means being adjustable to shift the longitudinal position of their outer ends in accordance with the longitudinal positions of the walls of the bins.

12. In combination with a fruit grader comprising a graduated rotary member and a traveling endless belt arranged adjacent thereto and forming in conjunction therewith the way, or chute, for the fruit to pass along and be separated or assorted by gravity, a distributing apparatus comprising fruit supporting means outwardly and downwardly inclined from one side to the other, and guide means extending obliquely across the supporting means, each guide means comprising telescoping members.

13. In combination with a fruit grader comprising a graduated rotary member and a traveling endless belt arranged adjacent thereto and forming in conjunction therewith the way, or chute, for the fruit to pass along and be separated or assorted by gravity, a distributing apparatus comprising fruit supporting means outwardly and downwardly inclined from one side to the other, guide means extending obliquely across the supporting means, each guide means comprising telescoping members, and means for adjusting the longitudinal position of the outer ends of said members.

14. In combination with a fruit grader comprising a graduated rotary member and a traveling endless belt arranged adjacent thereto and forming a grading way or chute for the fruit to pass along and be separated or assorted by gravity, a series of bins, a distributing apparatus therefor comprising a conveyer traveling longitudinally of the grading element and guiding means arranged along the conveyer forming chutes to guide the fruit to said bins.

15. In combination with a fruit grader comprising a graduated rotary member and a traveling endless belt arranged adjacent thereto and forming a grading way or chute for the fruit to pass along and be separated or assorted by gravity, of traveling separating and distributing means extending under said fruit grader and inclined downward away therefrom, the longitudinal extension of the delivery portion of said distributing means being greater than the longitudinal extension of said grader, and a series of bins arranged along said distributing means.

16. In combination, a grading element and a distributing apparatus therefor, and bins arranged at the side of the distributing apparatus, said distributing apparatus comprising a conveyer traveling horizontally and longitudinally of the grading element and under the same, guiding means extending transversely of the conveyer and forming separated chutes for the fruit and opening into respective bins.

17. A grading element and fruit bins, in combination with a conveyer of greater length than the grading element and extending alongside said fruit bins, and guiding means, on the surface of said conveyer and forming separated chutes for the separated and sized fruit, extending transversely of the conveyer.

18. In combination, a grading element and a distributing apparatus therefor, bins arranged at the side of the distributing apparatus, said bins provided with movable partitions whereby the widths of the bins along the distributing apparatus may be adjusted, said distributing apparatus comprising a conveyer traveling horizontally and longitudinally of the grading element and under the same, and guiding means extending transversely of the conveyer and forming separated chutes for the fruit and opening into respective bins.

19. A grading element, in combination with a distributing apparatus comprising a horizontally traveling conveyer inclined downward away from said grading element, guiding means arranged along the conveyer providing separated chutes for directing the fruit, and bins arranged below and along side said conveyer, said bins provided with movable partitions whereby the width of the bins may be adjusted with respect to the longitudinal extension of said conveyer.

20. The combination with a grading element and a series of bins, of a conveyer traveling longitudinally under the grading element and along the side of the series of bins, and adjustable guiding means arranged along the conveyer to guide the fruit to the bins, said guiding means diverging toward the bins, said bins provided with movable partitions whereby the longitudinal extension of the respective bins may be adjusted with relation to the length of the conveyer.

In testimony whereof, I have hereunto set my hand at Riverside, California, this sixth day of May 1908.

FRED STEBLER.

In presence of—
DORA V. GAMBEE,
FREDERICK J. LYON.

[Defendant's Exhibit No. 8—Letter, March 11, 1914, California Iron Works to Villa Park Orchards Assn.]

Bryan Clamp Trucks. Fred Stebler, Proprietor.
Phone Pacific 1408.

(Plate) California Iron Works,
Manufacturing Machinists,
Iron and Brass Founders,

Supplies for Steam Plants, Pumping Plants and Irrigating Systems, Manufacturers of Fruit Packers' Machinery.

Office, 117 Ninth Street, Riverside, California.

March 11, 1914.

Villa Park Orchards Assn.,
Orange, Calif.

Gentlemen:

Since I have not heard from you further with reference to supplying your equipment and knowing that you are also considering a proposition from a competitor I suppose I may assume that for some reason he may have offered you a proposition which you have decided to accept. I shall be very glad to hear from you in any case and if this be true I shall be glad to have ~~have no further use for it.~~ you return the drawing I made for you as I suppose you will have no further use for it.

In this connection however I suppose you are aware of the fact that the machines Mr. Parker is offering you are in controversy as regards the patent on them. This applies not only to the Grader but the Automatic Endless Elevating Dumper as well. This

is a machine with which it is proposed to take your fruit out of the basement and automatically elevate and dump it into the Washer. The *jist* of my cont*or*versy with Mr. Parker lies in the fact as I have repeatedly proved it, that he has built up his business by preying on and appropriating inventions which I own and which have proved valuable in the interest of the Orange Packer. Of course you understand he does not do this openly but on the pretense that because his machines are as he alleges [247] better or different he has a right to them. In every instance so far where the issue has been tried out to a conclusion I have been sustained and he has been proven to be in the wrong.

However this may be you may say how can this interest you as Mr. Parker will undoubtedly if asked to, agree to indemnify you. Forgetting for the moment and for the purpose of argument, the moral issue involved in this, it remains yet to be shown that Mr. Parker can in the end fully indemnify you for a possible interference or loss sustained in the event of an infringement suit against you.

There is in this instance a more immediate and important issue involved which you can well afford to consider seriously, that is whether or not the machines Mr. Parker is offering you, and particularly the grading machines are up to the full standard of efficiency requirements. Possibly you may have interviewed casually some users of this machine which as you know is practically new and has not had the benefit of a seas*ons* use to fully determine whether or not it will handle fruit of all kinds and shapes satis-

factorily and up to modern requirements. Possibly some may have told you that it does how-

Villa Parks Orchards Assn. #2.

ever this may be I wish to call your attention to two material and important advantages which my grading machines have and which [248] Mr. Parkers machines admittedly cannot have. One is that the rollers on the Grader are absolutely independently adjustable with relation to each other which insures and absolute independent control of the sizes within the will of the Packer. The other is the wide latitude of adjustment of the partition boards of the bins to permit of handling certain individual sizes with two or more packers as the fruit comes to the Grader. Particularly is this advantageous when picking to size or when the sizes may be running excessively large or excessively small.

Of more importance than either of these, however, is the accuracy or uniformity of sizes which the Grader will deliver to any individual bin, for, as you know, the trade will not now, as it formerly would, stand for mixed sizes. Of course, if the fruit were anywhere nearly round there would not be so much

difficulty about this, but when it gets enlongated or oblong in shape is when the difficulty begins and fruit grading machines that employ the incline travelling belt in place of the rope to propell the fruit through the machine are particularly weak on this point as the tendency of the elongated fruit with rope and roller machines is much greater to size by the shortest diameter only which any machine is expected to do than in the machine having a flat incline belt substituted for the rope. Consider this, then, in connection with the fact that in Parker*s* machine you have a grade opening at each roller of but 12 or 15 inches in length as against a grade opening of anywhere from 24 inches to 36 inches in length at each roller in my machine and you can begin to see the matter is of some importance.

Consider this then also with the fact that the Riverside Heights Orange Growers' Assn. after three years' experience along these lines who are the original supporters of Mr. Parker*s* efforts and who are now using four of Parker*s* Graders of the latest model are realizing and admitting that these machines are failures so far as modern requirements are concerned and you [249] will begin to see that the matter is even of more importance still. I am writing this in a spirit of logical reasoning and if you will receive it and consider it in like manner I am satisfied you will be cautious and fair in your conclusions and I am willing to go further along the same lines to convince you and prove to you the truth of every statement herein made and will close by asking that you accept it in the manner it is offered namely

in the furtherance of your own interests.

Yours truly,
FRED STEBLER.

[Endorsed]: Defts. Ex. 8. U. S. District Court. No. 1562. Defendant's Exhibit No. 8. Filed Aug. 7, 1914. ————, Master, ~~Referee.~~ Filed Oct. 3, 1914. Wm. M. Van Dyke, Clerk. By Chas, N. Williams, Deputy Clerk. [250]

[Report of Special Master on Accounting.]

In the District Court of the United States, Southern District of California, Southern Division.

IN EQUITY—CIR. CT. No. 1562.

FRED STEBLER,

Complainant,

vs.

RIVERSIDE HEIGHTS ORANGE GROWERS' ASSOCIATION and GEORGE D. PARKER,

Defendants.

To the Honorable OLIN WELLBORN, United States District Judge, in Equity Sitting:

I, Lynn Helm, by an Interlocutory Decree entered in the above-entitled matter on the 7th day of November, 1913, pursuant to the mandate of the United States Circuit Court of Appeals for the Ninth Circuit, appointed Special Master to take and state an account of the gains, profits and advantages which the said defendants and each of them have or has derived, received or made by reason of their infringement of the plaintiff's reissued letters patent No.

12,297, and to assess such damages against said defendants, and each of them as plaintiff has sustained or shall sustain by reason of said infringement or either of them, and to report thereon with all convenient speed, do respectfully report, that I have been attended by the said plaintiff, by Frederick S. Lyon, Esq., his attorney, and by said defendants, and each of them, by Nicholas A. Acker, Esq., their attorney, and having heard the evidence produced before me on behalf of the respective parties to said proceeding, the reporter's transcript of which, together with an account or statement [251] in writing, under oath, by each of the defendants, the Riverside Heights Orange Growers' Association and George D. Parker, respectively, of the number of infringing machines made, sold or used by them, or either of them, in infringement of reissued letters patent No. 12,297, dated December 27, 1904, together with the details of such manufacture and sale of each of such sales, and the gains, profits or advantages made or received by either of them in, by or through the manufacture or sale or use of each of said machines and also the exhibits referred to in said reporter's transcript, are returned herewith; and having examined and carefully considered the same, together with the record of the proceeding heretofore had in this case now on file in said court, which was all the evidence submitted upon said hearing before me by either of the parties to said proceeding; and having heard the arguments of counsel, and being fully advised in the premises, do respectfully report as follows:

1. It is not disputed that it is the duty of the special master to determine by the accounting all the infringing acts of the defendants.

The account should embrace not only the profits derived by the defendants and damages sustained by the plaintiff by reason of the infringing machines made before the institution of the suit, but also those made afterwards, though the construction be different. The accounting is had up to the time of the report. Stebler v. Riverside Heights Orange Growers' Association, (Opinion by Hon. Olin Wellborn, U. S. District Judge, filed February 18, 1914), Knox v. Great Western Quicksilver M. Co., 6 Sawyer, 430; Fed. Cases No. 7947; Hoe v. Scott, 87 Fed. 220; Starrett Co. v. Brown & Sharpe Mfg. Co., 208 Fed. 887, 893; Brown Bag. Filling Co. v. Drohn, 171 Fed. 438; Hopkins on Patents, Sec. 413, p. 584; Walker on Patents, (4th Ed.), Sec. 742.

That the defendants were guilty of infringing the plaintiff's [252] patent prior to November 7, 1913, was fully determined by the Interlocutory Decree entered herein on that date. Since that decree, by a modified construction of the infringing device, I find the defendant Parker has further infringed the plaintiff's patent.

The modified Parker machines have all the elements and perform all the functions of the plaintiff's patent, as defined by the Circuit Court of Appeals. The several rollers of the modified machines perform the same function in substantially the same manner as in the Strain invention and in the previous Parker device.

Understanding, as we do, the type of machine described by the Circuit Court of Appeals in this case, we may describe the modified Parker machines as we observed them at the Riverside Heights Orange Growers' Association packing house as, a combination with a traveling belt (a canvas belt of about 8 or 10 inches in width, slightly raised in the center to force the oranges against the side walls of the machine, being used in these instances) upon which the oranges are dumped and carried forward on the belt, with a series of independent rotating units about 45 inches in length placed end to end and arranged in longitudinal succession parallel with the traveling belt, each transversely adjustable, that is, each capable of being raised or lowered by means of a bracket between each set of rollers with an adjusting screw, the rotation of which serves to vary the distance of the bearing of the rollers from the other members of the grading opening. In this way, the distance of the rollers from the traveling belt is graduated in successive rollers so as to form a gradual increase in width of the grade opening between the walls and the belt from the feed end toward the other end of the machine. The rolls constituting the rotating wall of the grader are connected one to the other for the purpose [253] of rotation, and they are driven in unison from power positively applied at one end. In order to control the two adjacent rolls within the limits of practical operation it was necessary to make one of these machines with conical or tapering rolls, the larger end of each roll arranged next to the smaller end of the succeeding

adjacent roll, and in connection with the other machine whether the rolls were in uniform diameter throughout to place under them sticks or guides of about two-thirds the length of the rolls at the farthest end from the feed end for the purpose of limiting the outlet of the fruit. In either case, all the fruit of a particular size went through the upper 12 or 15 inches of each roll. Thus in the conical-shaped rolls the fruit went through the space underneath the smaller end of the roll for about one-third of the length of the roll and until the increasing diameter of the roll prevented other fruit from passing under the roll and the fruit of larger size was forced on to the next roll. In the case of the roll of uniform diameter the stick prevented the fruit from passing under the roll after it passed the opening at the upper end of the roll.

The difference between this modified Parker device and the Parker patent is that in the Parker patent the rolls which formed the upper member of the runway were independent of each other and were separated by a board or extensible guide arms, which filled the idle space between the rolls when they were set at a distance from each other, and effectively controlled the sizing operation of the machine. In the new machine, the larger portion of the tapered roll in one machine or the portion of the roller in the other machine that extended over the stick or guide corresponded to the idle space constituted by the overlapping sticks or boards or extensible guide arms, in the Parker patent. There was thus provided in all machines a method for [254] limiting the outlet

opening between the roller and the traveling belt to a definite portion of the unit, thereby presenting the same function in delivering the fruit of a different size at a definite portion of the runway. The mode of operation is substantially the same. There is nothing that serves substantially to differentiate the two devices.

The only real difference between the two devices is that in the Parker patent the rolls are rotated by the fruit, and in the modified devices the rollers are positively driven. The difference of their being end to end rollers is only one of degree, in the latter devices they being closer end to end than in the former. The modified device is a series of end to end rollers all so connected that they are positively driven from the roller at the head end of the machine, while in the Strain reissue patent each roller is driven by a separate belt from the common shaft. The function in regard to the rotation of the rollers is the same in each case since they all rotate together in either case. Practically, inasmuch as these rollers are all so connected that they rotate together they constitute a single roller. The essence of each of these inventions is the combination with a traveling belt of a series of independent rotating units arranged in longitudinal succession, parallel with the belt, each traversely adjustable.

There is this about the modified Parker Grader, that the series of connected rollers driven in unison and constituting the outer wall member of the fruit runway of the Grader, are not independently adjustable with respect to each other, nor

are they independently rotatable with respect to each other whereas, in the plaintiff's invention the rollers on the graders are absolutely independently adjustable. It may be true that in the modified Parker machines the adjustment of the initial or forward end of the roller does affect the rear end of the [255] preceding roller, but this is immaterial, as the rear end of the roller does not in operation of the machine form any part of the grade opening. The adjustment of the grade opening in all these machines, the Strain, the Parker Patent and the Modified Parker, is the adjustment of one grade opening independent of the effect upon the adjacent grade opening.

In so far as the rollers are end to end and connected so as to rotate together, they are similar in construction in the Modified Parker Machine to the grader exhibited at the Rialto Packing-house. The Rialto Packing-house machine was made after the Strain invention. Of this machine, it was stipulated that the rollers constituting the rotating wall of the gradeway are connected one to each other for rotation, and they are all driven in unison by power applied at one end and by means of a sprocket, and that the rollers of the grader constituting the rotating wall member of the runway are mounted in bearings, which bearings are adjustable toward and from the fixed members of the runway to vary the position of the rotating rollers relative thereto, the adjustable bearings separating two ends of adjacent rollers, the bearing covering two adjacent ends. The manner of separating and adjusting the roller side of the run-

way of said grader is not such as to permit in any manner of individual adjustment of separate grade openings formed by the roller surface and the belt, and in this respect the machine corresponds to the California Grader referred to in the record in this case. This machine is licensed under the Ish patent, under date of March 11, 1905, and the Rialto Orange & Lemon Association paid for such license to the plaintiff herein the sum of fifty dollars as a license fee. This machine at the Rialto Orange & Lemon Association's packing-house is not in all respects a California Grader as existing prior to the Strain invention, and as described in the opinion of the Circuit Court [256] of Appeals; but it is a modification of the California Grader or Ish Grader and evidently made with knowledge of the previous Strain invention. With the state of the art prior to the Strain patent the Master has nothing to determine; it has already been determined by the Circuit Court of Appeals.

In practical operation all of these machines have opposite each roller a bin, and as the fruit comes down the traveling belt it is graded by the smallest size passing under the roller with the smallest opening, the largest fruit passing on to the roller where the opening is of the size that will admit of the fruit passing under into the bin. The operation and function of each device is the same, and the same results are obtained from the modified Parker devices as from the devices manufactured under the Strain patent or the Parker patent. While the Parker devices may be an improvement upon the devices man-

ufactured under the Strain patent, yet it must be found that they are practically equivalents, and are constructed on the same principle and perform the same functions. I, therefore, find that the modified Parker device is not materially different from the device manufactured under and described in the Parker patent, and that having been held an infringement of the Strain patent, the modified device must also be held to be an infringement.

The plaintiff is, therefore, entitled to recover on account of the manufacture and sale of these modified Parker machines, the profits which the defendant Parker derived from the manufacture and sale thereof and also such damages as the plaintiff may have sustained and proved as having been suffered by him because of the infringement by the defendant Parker of the plaintiff's patent in these respects. [257]

2. ACCOUNT OF THE PROFITS, GAINS AND ADVANTAGES WHICH THE DEFENDANTS AND EACH OF THEM HAVE DERIVED, RECEIVED OR MADE BY REASON OF THEIR INFRINGEMENT OF THE PLAINTIFF'S PATENT:

Congress has awarded a remedy to the owner of useful inventions, in that it has provided for the recovery from the infringer of the profits made by him, and also the damages sustained by the patentee, and it has further provided that, in cases where the Court finds that the facts warrant it, the actual damages may be increased to the extent of three fold.

Rev. Stats., Secs. 4919, 4921; Walker on Patents (4th Ed.), Sec. 568.

In stating an account of gains, profits and advantages which the defendants and each of them have or has derived, received or made by their infringement of said plaintiff's patent, and in assessing damages which the plaintiff has heretofore sustained by reason of its said infringement upon a bill in equity by the owner against the infringers of a patent, I have understood the rule to be that the plaintiff is entitled to recover the amount of the gains and profits that the defendants have made from the manufacture, sale and use of the machines.

The burden of proof concerning the receipts of profits by the defendant Parker from the sale of the patented machines, and also concerning their precise amount devolves upon the plaintiff with this exception, that if the defendant claims that the machines containing the infringement also embody other matter, patented or unpatented, which is a factor in the profits realized by its use or sale, and claims that the burden of proof is upon the plaintiff to segregate the part of the profits arising from the infringement of the patented machine from the general profit accruing from the machines, it is *en*cumbent upon the defendant to prove that the peculiar features, or some substantial part of such peculiarities or former patents or other matter foreign [258] to the infringement claimed were embodied in the patented article sold, and that they were of such a character that they probably contributed to the profits.

In Canda Bros. v. Michigan Malleable Iron Co.,

152 Fed. 178, 181, Circuit Judge Severens stating the opinion of the Court said:

"The principle upon which this exception is grounded is well settled; but, before it can be applied, it is encumbent on the defendant to prove that the peculiar characteristic features or some substantial part of such peculiarities of the former patents were embodied in the patented articles sold, and that they were of such a character that they probably contributed to the profits. Elizabeth v. Pavement Co., 97 U. S. 126, 24 L. Ed. 1000. On this being shown, the burden of proof is devolved on the party seeking to recover the profits to prove what part of the entire profits are due to the use of his own invention. He must make the separation of values and show to the court how much is his rightful proportion. Garretson v. Clark, 111 U. S. 120, 4 Sup. Ct. 291, 28 L. Ed. 371."

In the practice of ascertaining the profits which an infringer has derived from the manufacture and sale of a patented article, the following rules have been enunciated by the Supreme Court of the United States in Westinghouse Co. v. Wagner Mfg. Co., 225 U. S. 604, 614.

(a) Where the infringer has sold or used a patented article, the plaintiff is entitled to recover all of the profits.

(b) Where a patent, though using old elements, gives the entire value to the combination, the plaintiff is entitled to recover all the profits. Hurlbut v. Schillinger, 130 U. S. 456, 472.

(c) Where profits are made by the use of an art-

icle patented as an entirety, the infringer is liable for all the [259] profits "unless he can show—and the burden is on him to show—that a portion of them is the result of some other thing used by him." Elizabeth v. Pavement Co., 98 U. S. 126.

(d) But there are many cases in which the plaintiff's patent is only a part of the machine and creates only a part of the profits. His invention may have been used in combination with valuable improvements made, or other patents appropriated by the infringer, and each may have jointly, but unequally, contributed to the profits. In such case, if plaintiff's patent only created a part of the profits, he is only entitled to recover that part of the net gains. He must, therefore, "give evidence tending to separate or apportion the defendant's profits and the patentee's damages between the patented feature and the unpatented features, and such evidence must be reliable and tangible, and not conjectural or speculative; or he must show, by equally reliable and satisfactory evidence, that the profits and damages are to be calculated on the whole machine, for the reason that the entire value of the whole machine, as a marketable article, is properly and legally attributable to the patented feature." Garretson v. Clark, 111 U. S. 120."

An attempt has been made in many cases to force an accounting in reference to infringement of patents into one or the other of the rules above mentioned, but it must be apparent that while there are many rules applicable to patent law, both as to determining the validity or invalidity of patents, or as

to the accounting which may follow, that many cases must be found within exceptions to the rule rather than in the strict letter of any rule that may be laid down. The real controversy arises when applying principles of law in those cases where it is impossible to say that a particular case comes directly within a given rule, [260] for there are cases, and this is one, where the patent and the ascertaining of its profits come within more than one of the rules above laid down.

It has been claimed on behalf of the defendant in this case, and counsel for the defendant strenuously relies thereon, that the rule (d, *supra*) laid down in Garretson v. Clark applies to this case because of the fact that the claims of the patent here infringed, 1 and 10, are confined as follows:

Claim 1: "In a fruit-grader, in combination a plurality of independent transversely adjustable rotating rollers; a nonmovable grooved guide lying parallel with the plane which passes vertically and longitudinally through the center of said rollers; said rollers and guide forming a fruit-runway; a rope in the groove in said guide and means to move said rope."

Claim 10: "In a fruit-grading machine, a runway formed of two parrallel members, one of said members consisting of a series of end-to-end rolls, brackets carrying the rolls, guides for the brackets, and means for adjusting the brackets upon the guides, substantially as set forth."

Claims 1 and 10 of the patent, it is urged, do not include a bin and distributing system; and therefore

the burden must be upon the plaintiff to show in what particulars his improvement has added to the usefulness of the machines or contrivances, and he must separate the profits derived from the sale of the infringing machines into those parts which are derived from the grading system and those derived from the bins and distributing system.

There were connected with the orange sizers certain other unpatented features such as the bin and distributing system, which while they are capable of segregation for the purpose of **[261]** ascertaining the respective costs of manufacture, were all sold together with the sizer as a complete machine, and it is impossible to determine the selling price of either otherwise than as they were sold as a whole.

The testimony in this case shows that there were 72 machines of the whole or large size made by the defendant Parker under the Parker patent which infringed the plaintiff's patent. The cost to the defendant Parker of manufacturing the sizers covered by the plaintiff's patent was $149.25 each. The defendant Parker manufactured also 13 half sizers, or single machines, at a cost of $94.04 each. The bins and distributing system cost $182.59 for the double sizers and $112.06 for the single or half sizers. The double sizers sold for $425.00, making a profit thereon of *$92.16*, and the single or half sizers sold for $225, making a profit of *$78.90* thereon. It will thus be seen that while the cost of manufacture is distributed into its component parts, the sale price is in each case of a completed article. It is true,

that the plaintiff also in making these machines separated the cost of the sizers from the cost of the bins and distributing system, and fixed a price for the sale of the sizers, independent of the bins and distributing system, at $175, and that he sometimes sold the sizers without selling the bins to persons who desired to put the sizers upon a grader system which they already had, using the bins already in their possession.

But the defendant Parker, in no case, has sold sizers independent of the bins, or of the entire grading system, and in no instance was said defendant able to segregate the profits of the sizers from the profit of the entire machines.

I have come to the conclusion that it was not necessary in this case for the plaintiff to separate or apportion the defendant's profits between the patented features of the sizer **[262]** and the unpatented features of the completed grader, but that the profits in this case are to be calculated on the whole machine for the following reasons:

The patent, though using the old elements of an orange sizer, in fact being as described by the Circuit Court of Appeals, as a modification or addition to the Ish machine, gives the entire value to the combination, and the plaintiff is entitled to recover all of the profits derived from the sale of the machine by the defendant Parker.

This is a combination patent, and the claims herein infringed are included in the combination. There are several parts which go to make up the

combination of the complete sizer or grading machine. The parts of a sizer consist of the traveling belt, or canvas, the adjustable rolls, the machinery which drives the belts and rolls and the bins in which the fruit is finally received. Without the bins the sizer would no more be complete than without the traveling belt. In fact, it has been found in this case that the object of a sizer with predetermined grade spaces fixed by adjustable rollers, was in its relation to the bin space for the assorted fruit. The problem in handling several sizes of oranges was to provide adequate bin space, or give access thereto for the requisite number of packers employed in sorting as to quality, wrapping and packing the oranges. As the result of the patent, the operator, at will, could adjust the grade size of the machines as he saw fit, and subject to certain limitations, might deliver any size of orange into any bin. The fact that the inventor directed his attention to the traveling belt and adjustability of the rolls, does not make the bins any less a part of the machine. The bins and distributing system are old and simple, and it is enough to say that there is no patent upon them separately. **[263]**

It will be noticed that in the case of Garretson v. Clark, *supra*, it was founded on patents for improvements "in the method of moving and securing in place the movable jaw or clamp of a mop head" as Mr. Justice Field puts it. To be more precise it was for the provision of a nut to be connected with the collar of the movable clamp and adapted to be moved up or down on the thread shank of the handle,

and as the learned Justice said: "With the exception of this mode of clamping, mop heads, like the plaintiff's had been in use time out of mind." I do not take it, that there would have been any question, if this had been a new invention of a mop head, between the profits derived from the mop head and the mop stick, but that it would have then been held, though old elements were used, the entire value of the combination was given to the device by the mop head, and that the plaintiff would have been entitled to recover all the profits. There is little doubt that in the case of a machine embodying several patented improvements and infringements of several patents belonging to several different persons, there should be a separation of the profits derived from the several patents. This, however, was a case of a patent for an improvement, and not of an entirely new machine or contrivance, and the application of the rule in Garretson v. Clark must be confined to the latter; this is evident when the Court therein speaks of the apportionment "between the patented features and the unpatented features."

In the case of Yesbera v. Hardesty Mfg. Co., 166 Fed. 120, 125, the Circuit Court of Appeals, in speaking of this language says:

"Now when we remember that there are two classes of patents, one for simple elements, and another for combinations of elements, and the distinguishing characteristics of the two **[264]** classes, it is readily seen how impossible it is to apply this language to the other class of patents than those of the class specified. In a combination patent

there are no unpatented features in the sense that they are separable from patented ones, and no one of the elements is patented. They may all be old and not patentable at all unless there is some new combination of them. The point to be emphasized is that the law looks not at the elements or factors of an invented combination as a subject for a patent, but only to the combination itself as a unit distinct from its parts, and in such case there could be no comparison of patented and unpatented parts."

It is not a fact that the whole of Strain's invention resides in the traveling belt and adjustable rolls, but it extends to all other parts of the grader. This *bring* this case within the authority of Brennan & Co. v. Dowagiac Mfg. Co., 162 Fed. 472. In that case, the Court said:

"The claims of the patent in suit are not restricted to single things, but some of them—the first, for instance—include the several elements which go to make up the seeding part of a drill, in combination. It covers them all as one whole. Every one is made material by including it in the combination. The spring devices are not thereby patented. For the purposes of the claim and the patent thereon, they are on the same footing with all the other parts of the drill, however old and common they may be. Anyone might make and sell each and every part, or any lesser or larger combination of such parts, including the spring device, without infringing the patent, provided, of course, they are not intended to contribute to the making up of the entire combination covered by the patent. But one part in a com-

bination is no more patented than another. All in association are patented. **[265]**

The parts of a drill consist of a carrier, a seed box or reservoir, and the seeding apparatus. It is to the latter that the attention of inventors has been principally directed. The carrier and the seed box are old and simple. Of them it is enough to say that no one appears in this case to have any patent on them.

* * * * * * * *

The case here is not a patent for an improvement upon another article, which does not cover that other article, but only the improvement made upon it. The patentee cannot in such case extend his invention over the thing improved, if the latter is patented. If not, he may appropriate it, as others of the public may. The distinction is well illustrated by the improvement of the harvester in Seymour v. McCormick, 16 How. 480, 14 L. Ed. 1024. When, therefore, the defendant sold one of the plaintiff's machines, he sold that which in all its associated parts was covered by the patent; and a Dowagiac drill, without the Hoyt patented combinations, would be but the fragment of a drill and have no distinctive character. The invention was not an addition to an otherwise complete machine.

In the cases of Elizabeth v. Paving Company, 97 U. S. 126, 24 L. Ed. 1000, and Hurlbut v. Schillinger, 130 U. S. 456, 9 Sup. Ct. 584, 32 L. Ed. 1011, no doubt the material employed, the blocks, the sand, the gravel, the cement, could have been put down in the usual way in some other fashion, and have been of

some value as a pavement, but not to the extent of excellence that one laid according to the patent would have been. Indeed, the records in both those cases show that former patents had taught how this might be done. But the patents then before the Court did not adopt some earlier method of paving and then add an improvement, but they pointed out a new way of organizing the materials, which was to be substituted for the old way; and **[266]** the Court held in each case that the owner of the patent was entitled to recover the profits made by building the pavement in the new way. In the latter of those cases Mr. Justice Blatchford, who formulated the rule laid down in Garretson v. Clark, 111 U. S. 120, 4 Sup. Ct. 291, 28 L. Ed. 371, delivered the opinion, and cited that case. He evidently regarded the language employed in the second alternative of the rule there stated as the statement of a broad principle, which would be applicable to cases not covered by the first.

We therefore think that the plaintiff was entitled to recover the profits made on the infringing machines."

I fully appreciate the application of the rule laid down in Garretson v. Clark, *supra*, and have fully considered the very recent case of Seeger Refrigerator Co. v. American Car & Foundry Co., 212 Fed. 742, but I do not consider that rule applicable to this case for the reason that it is not a patent for a portion of a sizer machine only, but embraces the entire machine, and all of its essential elements, and the patent gives its entire value to the combination.

In the case of Seeger Refrigerator Co. v. American Car & Foundry Co., *supra*, the entire value of the refrigerator car body, as a salable and marketable article, in conjunction with the running gear was not in law or in fact attributable to the invention of the patent in suit. During the accounting period, the defendant, in addition to the infringing cars made and sold many freight refrigerating cars otherwise equipped than with the Bohn partition covered by the patent. The Bohn partition did not "inhere in" and include an entire refrigerator car body as an entity or convert the car body into an entire structure constituting a new article of manufacture, but was only an improvement in a single element of an otherwise well known device. In reference to this the learned District [267] Judge who passed upon the master's report said:

"Under these circumstances this case called for an apportionment if practicable of profits as between the complainant and defendant in accordance with the principles of law and equity applicable to the subject. Where mechanism, consisting of a mechanical combination, is old and open to be made, used and sold by the public, and one of its elements is so improved as to confer patentability upon the combination, as a whole, but such improvement, while increasing the efficiency or value of the mechanism over what was before known or used, does not change its function or affect the principle of its operation, the owner of the patent in seeking only to recover profits from an infringer of the combination is limited to the excess of profits realized by

him from the manufacture, use or sale of the mechanism, as so improved, over what he might or would have made from the manufacture, use or sale of the old mechanical combination. Garretson v. Clark, 111 U. S. 120, 4 Sup. Ct. 291, 28 L. Ed. 371; Maier v. Brown (C. C.), 17 Fed. 736; Westinghouse Co. v. Wagner Mfg. Co., 225 U. S. 604, 32 Sup. Ct. 691, 56 L. Ed. 1222, 41 L. R. A. (N. S.) 653; Brinton v. Paxton, 134 Fed. 78, 67 C. C. A. 204; Star Salt Caster Co. v. Crossman, 4 Barn. & Ard. 566; Baker v. Crane Co., 138 Fed. 60, 70 C. C. A. 486."

This is a sufficient quotation from the opinion in that case to distinguish it from the case at bar. That court, however, did recognize this principle, that "where the whole commercial or marketable value of an infringing mechanism arising from a patented improvement, the owner of the patent is entitled to recover from the infringer the total profits made from the manufacture and sale of such mechanism."

In Crosby Valve Co. v. Safety Valve Co., 141 U. S. 441, the Court said: [268]

"It appearing that the defendant's valve derived its entire value from the use of the Richardson invention covered by the patent of 1866, and that the entire value of the defendant's valve, as a marketable article, was properly and legally attributable to that invention of Richardson, the plaintiff is entitled to recover the entire profit of the manufacture and sale of the valves. Elizabeth v. Pavement Company, 97 U. S. 126, 139; Root v. Railway Company,

105 U. S. 189, 203; Garretson v. Clark, 111 U. S. 120; Callaghan v. Myers, 128 U. S. 617, 665, 666; Hurlbut v. Schillinger, 130 U. S. 456, 471, 472."

See Gould Mfg. Co. v. Cowing, 105 U. S. 253.

But there is no necessity of forcing this case into one or other of the classifications made in the case of Westinghouse Co. v. Wagner Mfg. Co., *supra*. There is still a further ground why the plaintiff should recover the profits made by the defendant infringer, and that is, the utter impossibility of making mathematical or approximate apportionment of the profits derived in this case, or segregating the profits derived from the sizers alone from the profits derived from the sale of the entire machine, including bins and distributing system. From the very necessity of the case one party or the other must secure the entire fund. In justice and in equity, the fund must be awarded to the patentee and not the infringer. The infringer is the wrongdoer, and the innocent patentee is entitled to recover, "the profits to be accounted for by the defendant." Of this, the Supreme Court of the United States, in Westinghouse v. Wagner Co., *supra*, pp. 620–622, said:

"This conclusion is said to be in conflict with the Garretson and other decisions which, it is claimed, justify the conclusion that the defendant is entitled to retain all of the profits even where the patentee is unable to make an apportionment. Warren v. Keep, 155 U. S. 265. An analysis of the facts **[269]** of those cases will show that they do not

sustain so extreme a doctrine. For they deal with instances where the plaintiff apparently relied on the theory that the burden was on the defendant, and for that, or other reasons, made no attempt whatever to separate the profits. None of the cases cited discuss the rights of the patentee who has exhausted all available means of apportionment, who has resorted to the books and employees of the defendant, and by them, or expert testimony proved, that it was impossible to make a separation of the profits. This distinction, between difficulty and impossibility, is involved in the ruling by the Circuit Court of Appeals for the Sixth Circuit in Brennan & Co. v. Dowagiac Mfg. Co., 162 Fed. Rep. 472, 476, where the Garretson case was distinguished, and the Court said:

" 'In the present case the infringer's conduct has been such as to preclude the belief that it has derived no advantage from the use of plaintiff's invention. . . . In these circumstances, upon whom is the burden of loss to fall? We think the law answers this question by declaring that it shall rest with the wrongdoer, who has so confused his own with that of another that neither can be distinguished. It is a bitter response for the Court to say to the innocent party, "You have failed to make the necessary proof to enable us to decide how much of these profits are your own"; for the party knows, and the Court must see, that such a requirement is impossible to be complied with. The proper remedy to be applied in such cases is that stated by Chancellor Kent in Hart v. Ten Eyck, 2 Johns. Ch. (N. Y.) 62,

108, where he said: "The rule of law and equity is strict and severe on such occasion. . . . All the inconvenience of the confusion is thrown upon the party who produces it, and it is for him to distinguish his own property or lose it." ' **[270]**

"It may be argued that, in its last analysis, this is but another way of saying that the burden of proof is on the defendant. And no doubt such, in the end, will be the practical result in many cases. But such burden is not imposed by law; nor is it so shifted until after the plaintiff has proved the existence of profits attributable to his invention and demonstrated that they are impossible of accurate or approximate apportionment. If then the burden of separation is cast on the defendant it is one which justly should be borne by him, as he wrought the confusion."

Applying these principles to the case at bar, it appears from the evidence in this case that the defendant Parker has received the profits upon the 72 whole or large-size machines of the Parker patent type, and upon 13 of the small type, or half size, made by the defendant Parker prior to the entry of the interlocutory decree herein, the sum of $5,245.06, as shown by the statement of account herein furnished by the defendant Parker, and not disputed by plaintiff (Record, pp. 22, 23), except that to this certain additions should be made because of errors in certain items furnished by the defendant Parker of the cost of the machines, as for instance, an error of $8.54 in the cost of mill work in 72 double and 13 single machines, making a total of $725.90; also an error in

the cost of belting of $4.66 per machine of the large type and $3.78 on the single or haif-size machines, making a total of $384.68.

There should also be added the profits of 4 machines sold for use in Porto Rico. There were two machines of the whole size selling for respectively $354 and $425, and 2 of the small type, selling for $210 each. The cost of manufacturing and selling these machines in Porto Rico, I find, was, the large size $223.14, and the small size $128.10, making the total cost of the four machines, $702.48. The machines sold for $1,199. [271] making a profit to the defendant Parker of $496.52, based upon the cost as to selling price arrived at according to the rules hereinbefore laid down.

I have made no allowance herein for the additional machine sold to Benchley, mentioned on page 4 of the reporter's transcript of the record herein, for the reason that while said machine sold for $195, there is nothing to determine the manufacturing cost thereof. It was a small quarter-sized grader and there is no record in the case of the cost of any such sizer made by the defendant or the plaintiff. It is therefore disregarded in the assessment of plaintiff's damages, as well as in the computation of defendant's profits.

We have, therefore, a total profit on the Parker patent type of the 72 machines of the large size and 13 of the small size and the 4 machines sold for shipment to Porto Rico of $6,852.16.

On the modified type of graders manufactured by the defendant since the entry of the interlocutory

decree herein, the profits shown by the defendant Parker in a statement of costs and sales thereof (Complainant's Exhibit 4), not accepted to by the plaintiff, were $2,450.52. This should be increased by $50.22, an error of $2.79 in the cost of each machine as to the item, "90′ 14″, 4-ply cotton belting, at $30.33," which only cost $27.54. The profit, therefore, derived from these machines was $2,500.74.

This will make a total of profits derived by the defendant Parker, but without making any allowance for overhead expenses in the cost of manufacturing said machines from the sale of the infringing machines, of $9,352.90. This will more concisely appear by a tabulated statement, Schedule A, as follows: [272]

Schedule "A" [to Report of Special Master on Accounting].

Profits on 72 whole Sizers and 13 half Sizers, "Parker Patent" type, conceded, Record, pages 22–23.....		$5,245.06
Correction—Error of $8.54 cost of mill work in 72 double and 13 single machines....		725.90
Correction—Error in cost of belting, $4.66 per machine, 72 machines	335.54	
In single machines, $3.78, 13 machines	49.14	384.68

4 machines sold for use in Porto Rico, sale prices....	$354.00	
	425.00	
	210.00	
	210.00	
	$1,199.00	
Less cost of 2 larger ones at $223.14 each, and 2 smaller ones at $128.10....	702.49	496.52
Total profit on "Parker Patent" type machines....		$6,852.16
On "Modified" type and sale of Rolls therefor:		
Amount as per supplemental statement $2,450.52		
Excess charge for cost due to error in item of 90 ft. 14″ 4-ply cotton belt, $30.33 each, should be $27.54, or $2.79 on 18 machines	50.22	2,500.74
Total profits		$9,352.90

[273]

3. OVERHEAD EXPENSES OF THE DEFENDANT PARKER, TO BE ALLOWED HIM AND DEDUCTED FROM THE PROFITS WHICH OTHERWISE HE WOULD HAVE MADE FROM THE MANUFACTURE AND SALE OF THE INFRINGING MACHINES EXCEPT THEREFOR.

No allowance having been made to the defendant Parker in the foregoing accounting because of overhead expense of the defendant in the manufacture of the infringing machines, a certain allowance should be made on this account.

Where either the plaintiff or the defndant is engaged in a general business and the patented invention constitutes only one department of his manufacture or sales, the expenses of the business must be apportioned in the ratio of the respective cost of production and sales of the infringing and the non-infringing articles, and the apportionment of the former charged as the expenses of their sale. Both the plaintiff and the defendant were engaged in the general manufacture and sale of packing-house supplies, and each did a large and extensive business at Riverside, California. The portion of the overhead charges, or the expenses of the business of the defendant, which the manufacture and sale of the infringing machines is to the entire business of the defendant during the time of the infringement, should be credited upon the profits which we have heretofore found as having been made by the defendant because of his manufacture and sale of the infringing machines in question.

For the purpose of determining what this overhead charge of the business of the defendant was, and for which he is entitled to receive a credit, a stipulation was entered into between the parties hereto which appears in the reporter's transcript of the record herein on pages 121–123. [274]

The entire gross expense of running the business of

the defendant was given, and also the gross receipts of the entire business and the gross receipts from the manufacture of the infringing device, and it was stipulated that the master should make the proper and just apportionment of overhead expenses that should be borne in the manufacture of the infringing device. The overhead expense of the defendant Parker during the period from March, 1912, to and including March, 1913, including such items as are set forth in an account or statement F, filed herein, amounted to $8,684.59; while the gross business of said Parker during said time amounted to the sum of $83,000.00. During the period of April, 1913, to and including April, 1914, the overhead expense of said defendant Parker's said business, including therein such items as are set forth in the overhead statement accompanying defendant Parker's supplemental report, amounted to $7,469.45; and the defendant Parker's business during the said time was $120,840.00. This was stipulated to.

The stipulation reserved the objection to the items as to whether the particular item was allowable, but not objecting to the amounts of such items. It was stipulated with relation to the volume of business that the gross overhead expense for the period between March, 1912, to and including March, 1913, should be taken as the average of the overhead expense during the period covered by the first and original statement of account filed on behalf of the defendant Parker herein, as the volume of gross business per year.

In view of this stipulation, not being able to ascer-

tain the items that go to make up the gross overhead expense of the defendant Parker during either of the times mentioned, I have assumed that the figures given of overhead expense accurately stated the gross overhead expense of the business of the defendant Parker during the several times hereinbefore mentioned. [275]

Allowing that the gross overhead expense of the defendant Parker for each of the three and a half years preceding March 1, 1913, *were* $8,684.59 per annum, and that he transacted a business each year during that time of $83,000.00, and that during the period from April, 1913, to April, 1914, his gross overhead expense was $7,469.45, and his gross business, $120,840.00, I have calculated that his overhead expense averaged .094 per cent of his business, and that his overhead expense of manufacturing the infringing machines was .094 of the total amount of the selling price of the machines and sets or rolls sold during that time, $43724.00, namely, $4120.05.

This should be deducted from the profits which the defendant otherwise would have made from the infringing device, leaving a net profit to defendant from the manufacture of the infringing machines and the sale of rolls of $5232.85. This will more concisely appear by a tabulated statement, Schedule B, as follows:

Exhibit "B" [to Report of Special Master on Accounting].

Stipulation.

For period March, 1912, to March, 1913:

Gross Business $83,000.00

Overhead Expense. ..... 8684.59—.1046 per cent of business.

For period April, 1913, to April, 1914:

Gross Business $120,840.00

Overhead Expense .... 7,469.45—.0617 per cent of business.

For 4½ years, September 1, 1909, to March 1, 1913:

Gross Business $332,000.00

Overhead Expense .... 38,317.22—.1046 per cent of business.

[276]

For period April 1, 1913, to March 1, 1914:

Gross Business .....,$120,840.00

Overhead Expense 7,469.49

Total Gross Business.. 452,840.00

Total Overhead Expense 45,786.67—.094 per cent of business.

Selling price of machines sold:

72 whole Sizers at $425. 6.00 each.....	$30,600.00
13 half Sizers at $285.00 each.....	3705.00
4 machines sold for use in Porto Rico...	1199.00
18 machines of "Modified Parker" type at $400.00 each	7200.00
2 half Sizers including belt etc.....	585.00
Amount received for 9 whole sets and 3 half sets of rolls.....	435.00
	$43,724.00

Overhead expense .0914 of sales	$43724.00	4,120.05
Total gross profits made by the defendant as heretofore found, schedule "A"....	$9,352.90	
Less overhead expense.....	4,120.05	
Net profits to defendant for manufacture of infringing machines	$5,232.85	[277]

4. AS TO THE DAMAGES TO BE ASSESSED AGAINST THE DEFENDANT PARKER BY REASON OF HIS INFRINGEMENT OF PLAINTIFF'S PATENT:

Damages are given as compensation for the injury actually reciever by the plaintiff from the defendant. They must fully compensate the plaintiff for his injury sustained, but must be the result of the injury alleged, and the amount awarded shall be precisely commensurate with the injury suffered, neither more nor less. (Birdsall v. Coolidge, 93 U. S. 64.)

The defendant should make good the depreciation in the value of the plaintiff's enjoyment and use of the invention which his own wrongful act has caused. The exclusive enjoyment of the plaintiff in his patent in this case, consisted in the manufacture and sale of the patented articles. The pecuniary value to the plaintiff is represented by the difference between the expense of his production and the price he could have obtained, and the damage sustained by the plaintiff in his being deprived of this pecuniary value. There is no presumption, either of law or fact, that the plaintiff has lost or that the defendant has gained, or that the defendant's advantage is equal to the plain-

tiff's loss. It was shown in this case, that the plaintiff was ready and able to supply the market with the machines, and it is a fair inference that he would have sold all that the defendant sold; in fact, he was asked *to* bid on supplying most of the infringing machines. His facilities for manufacturing were equal to those of the defendant, and he had been in the business of supplying the market with graders and sizers under the patent prior to the infringement of the defendant. It may therefore be inferred that all who brought of the defendant would have bought from the plaintiff. Gould Mfg. Co. v. Cowing, *supra;* 3 Robinson on Patents, p. 342. [278]

It is established in this case what is the expense to the plaintiff in manufacturing and marketing the patented articles and they are less than the defendant's, and but for the infringement of the defendant, the plaintiff would have made the profits which have been received by the defendant, and in addition thereto would have made the difference between what it would have cost the plaintiff to manufacture the machines and what it did cost the defendant. This difference in cost to the plaintiff, and which he would have made over and above the defendant's profits, is the plaintiff's damages in this case. It is the injury which the plaintiff's business has suffered by reason of the defendant's acts.

Here also, as in estimating profits, if the article in question would have been unsalable without the infringing device, or if the defendant has so confused the profits derived from a sale of plaintiff's invention with the other portions of the device, and no

separate estimate of the profits can be made, the entire profit may be regarded as derived from the invention. But an examination of this record will show that the plaintiff in this case had a fixed price for the sale of sizers and half sizers, independent of the bins and distributing system. It is therefore, necessary to determine what his profit would have been if he had sold sizers to the number sold by the defendant Parker and what profit he would have made thereon and what was his loss, if any, by reason of the manufacture and sale of the infringing articles.

Manifestly, if the profits which the plaintiff would have derived from the sale of a like number of infringing machines, exceeded the profits derived by the defendant, the difference would be the plaintiff's damages. **[279]**

"In addition to such profits as the defendant has received, the plaintiff is also entitled to recover any excess which would have been included in his own profits, had he supplied the market with a similar amount and quality of goods. It being proved that he would have sold all that the defendant sold, and that his expense of manufacturing would not have been greater than that of the defendant, it follows that he would have derived an equal profit if his sales had been continued at the same prices. But if he could have made the articles at less expense, or sold them at a higher price than the defendant did, his loss exceeds the profit of the defendant by whatever sum may cover this difference between the profit which he would have realized and that which the defendant had obtained."

3 Robinson on Patents, pp. 356, 357.

This is the measure of the plaintiff's damages.

It appears from the testimony in this case, without contradiction, that the defendant Parker sold 72 whole sizers and 13 half-sizers under the Parker patent; that he also sold 2 full sizers and 2 half-sizers for shipment to Porto Rico; and that since the decree was entered he has sold 18 full sizers of the modified Parker device and 2 half-sizers. It would have cost plaintiff exclusive of overhead expense, as shown by complainant's Exhibit 5 filed herein, to manufacture such sizers $57.99 each, and his selling price therefor was $175.00 each. The net profit to the plaintiff, therefore, not including overhead expense hereafter referred to, on these 105 machines sold by the defendant Parker, would have been $12286.05, which constitutes the damages suffered by the plaintiff, if no profits were accounted for by said Parker. This will more concisely appear by a tabulated statement, Schedule C, as follows: [280]

Schedule C [to Report of Special Master on Accounting].

Selling price of 105 Sizers at $175.00 each,	$18375.00
Net manufacturing cost of 105 Sizers to plaintiff as shown by plaintiff's Exhibit "5" after deducting overhead expense of $3.50 each Sizer at $57.99 for each Sizer.....	6088.95
Net profit to plaintiff not including over head expense on 105 machines sold by the defendant if manufactured by the plaintiff	$12286.05

5. OVERHEAD EXPENSE OF THE DEFENDANT:

This profit of the plaintiff, however, is subject to a deduction on account of the overhead expense of the business of the plaintiff, to be added to the cost of manufacturing said sizers.

As the plaintiff, like the defendant, was engaged in the general manufacture and sale of packing-house supplies, the portion of the overhead charges or expense of the business of the plaintiff which the manufacture and sale of the infringing machines would have borne to his entire business during the time of the infringement should be credited upon the damages which we have heretofore found would have been sustained by the plaintiff because of the manufacture and sale by the defendant of the infringing machines in question.

As a stipulation was entered into with reference to the overhead expense of the defendant, as hereinbefore set forth, a like stipulation was made in regard to the overhead expense on account of the plaintiff, and the items thereof were agreed to and stipulated subject to the same objection as to the particular items being allowable or chargeable as overhead [281] expense, but no objection was made to the amount of such items.

Said statement of overhead expense on behalf of the plaintiff during the period from October 1, 1912, to and including October 1, 1913, being as follows:

Office supplies	$ 256.00
General expense	689.12
Office and labor expense	1989.73

Light, power and water	334.95
Taxes	192.75
Insurance	217.85
Depreciation on buildings values at $7050.00 at 2½%	176.25
Depreciation on machinery valued at $8049.97 at 5 %	402.30
Total	$ 4259.15
Gross business during said time	$95933.21

The sales of graders during said time amounted to $19065.00 and this is to be accepted as a general average upon which to compute the proportion of overhead expense due to the grader business, such overhead expense pro rata to be established by the master in accordance with the stipulation aforesaid.

The gross overhead expense of the plaintiff in his business is, therefore, .0444. The selling price of 105 sizers sold at $175.00 each, was $18,375.00. The overhead expense on these sales is, therefore, $815.85. This is to be deducted from the plaintiff's gross profits on 105 sizers sold by the defendant Parker, as shown on Schedule C as heretofore found, amounting to $12,286.05, leaving a net profit to the plaintiff from the manufacture and sale of 105 sizers, if he had manufactured and sold the same, of $11470.20. This will more concisely appear by a tabulated statement, Schedule D, as follows: [282]

Schedule D [to Report of Special Master on Accounting].

Stipulation for period Oct. 1, 1912 to Oct. 1, 1913.

Gross business	$95933.21	
Overhead expense	4259.15	
Overhead expense is therefore .0444 of business.		
Selling price of 105 Sizers sold at $175.00 each		$18375.00
Overhead expense .0444 of sales	$18375.00	815.85
Plaintiff's gross profits on 105 Sizers sold by the defendant Parker as shown by Schedule "B"	$12286.05	
Less overhead expense of	815.85	
Net profit to plaintiff from manufacture of 105 Sizers		$11470.20

6. DAMAGES TO BE DETERMINED BY DEDUCTION FROM PLAINTIFF'S PROFITS WHICH HE WOULD HAVE RECEIVED, OF THE PROFITS WHICH THE DEFENDANT PARKER MADE BY THE INFRINGING ACTS.

In determining the amount of the damages which the plaintiff has suffered by reason of defendant Parker's infringement of plaintiff's patent, the profits which the defendant Parker made from his infringing acts, being less than the amount of the profits which the plaintiff might have gained by the manufacture and sale of the same number of ma-

chines as were made by the defendant are to be subtracted from the amount of the gains which the plaintiff might have gained by supplying the demand for the machines supplied by the defendant Parker. [283]

It is not proper, however, to take the entire profits which the plaintiff would have made but for the infringement, and add thereto the defendant's profits. The damages do not consist solely in what profits the defendant made, but if the plantiff recovers from the defendant all the profits which the defendant made, and the damages which the plaintiff suffers by reason of the difference between what he could have manufactured the articles for at less expense than the defendant, or sold them at a higher price, the plaintiff is fully compensated by reason of the acts of infringement of the defendants.

In Westinghouse v. New York Air Brake, 131 Fed. 607, the Court said:

"The rule is clear that the profits which the complainant might have gained by supplying such demand are recoverable as damages which it suffered thereby. It is also clear that, if such sum exceeds the profits which the defendants gained, such profits can be enlarged until they equal the complainants' losses, but that the two amounts cannot be added together and charged up to the defendants."

It is, however, necessary, in this case that there should be full and complete award of damages given to the plaintiff because of the wrongful acts of the defendants, for it has been determined that the purchasers of these infringing machines shall be en-

titled, after the payment to the plaintiff of the profits which the defendant made and the damages which the plaintiff has sustained, to continue to employ the machines as if they had been purchased from the plaintiff.

It is contended by the plaintiff that he is entitled to recover all gains which he might have made by supplying the demand for the machines which were supplied by the defendant [284] Parker as an infringement of the plaintiff's patent, as damages, and that there should be added thereto all of the profits which the defendant Parker has gained by reason of his infringing plaintiff's patent, notwithstanding, the defendant's profits were less than the amount which the plaintiff would have made if he had been allowed to supply the market for the machines covered by plaintiff's patent without any infringement of his rights by the defendant Parker. This contention of the plaintiff is based upon a misconception of the opinion filed by the United States Circuit Court of Appeals on the 30th day of May, 1914, in this case. In that opinion, the Court said:

"The plaintiff derives his profits from the manufacture and sale of the fruit grading machines covered by the patent. These profits consist of the difference between the cost of manufacture and the prices for which he sells the machines. These profits are, therefore, the only compensation which he receives for the machines manufactured and sold by him during the entire life thereof. When final judgment is entered against the defendants pursuant to the accounting which has been ordered against them,

the plaintiff will receive thereunder full compensation for the use of the machines by the vendees of the defendants herein for such period as they are capable of being used, in the same manner and to the same extent as he would have done had he sold the machines himself. This being true, a decree against the defendants for the profits which they received by reason of the sales of the infringing machines, together with whatever damages the plaintiff may have suffered by reason thereof, must be held to vest the right to the use of the machines in the defendants' vendees free from any further claim by the patentee. * * * [285]

"The plaintiff will under the decree be entitled to receive such profits as may be found to be due to him, as well as such damages as may be found to have been sustained by him, by reason of the acts of infringement of either of the defendants, without regard to the acts of infringement of the other."

In my opinion, this does not in any way change the well-settled rule of law that the total damages that might be suffered by the plaintiff and profits gained and received by the defendant are not to be added together and charged to the defendant.

The Circuit Court of Appeals did not determine that the damages suffered by the plaintiff were all of the gains that the plaintiff might have made if he had supplied the market with the number of infringing machines supplied by the defendant, but only asserted that in the final judgment, the plaintiff should receive full compensation for the use of the machines by the vendees of the defendant for such period as

they were capable of being used in the same manner and to the same extent as he would have done had he sold the machines himself; and when the plaintiff is awarded the profits and damages as above set forth, that is to say, all profits that the defendant derived from the sale of the machines and a sum equal in damages to the difference between these profits and what the plaintiff would have gained if he had sold the machines he is receiving the actual and full and actual compensation for the sale and use of said machines.

It must follow, therefore, that the plaintiff's damages in this case are the amount of profits which he would have made by the manufacture and sale of the machines which the defendant manufactured and sold, namely: the sum of $11,470.20, reduced [286] by the sum of $5,232.85, the net profits to the defendant from the manufacture and sale of the infringing machines, leaving a net balance of damages due the plaintiff from the defendant Parker of the sum of $6,237.35.

If the Court should determine that the damages found by the master were insufficient because of the willful infringement by the defendants of the plaintiff's patent, the Court has power, in its discretion, to enlarge the damages as is given to increase the damages found by verdicts in action at law, not exceeding three times the amount of the finding of the master.

7. I find that the defendants, the Riverside Heights Orange Growers' Association and George D. Parker, infringed the plaintiff's patent by the

purchase and use of (5) five grading machines, which the defendant Riverside Heights Orange Growers' Association purchased from the defendant Parker, and that the damage to the plaintiff by reason of said infringement was the sum of $585.05.

CONCLUSION: As a conclusion from the foregoing findings of fact, I find:

1. That the plaintiff should recover from the defendant George D. Parker, the sum of $5,232.85, the gains and profits which the defendant, George D. Parker, made and received from the manufacture and sale of the machines hereinbefore referred to in infringement of plaintiff's patent.

2. That plaintiff should have and recover from the defendant, George D. Parker, the sum of $6,237.35 damages which the said plaintiff suffered by reason of the defendant George D. Parker in infringing the plaintiff's patent as hereinbefore set forth.

3. That the plaintiff should have and recover from the defendants Parker and the Riverside Heights Orange Growers' [287] Association the sum of $585.05, the damages which the plaintiff suffered by reason of the infringement by said defendants of the said plaintiff's patent; said damages are, however, included in the damages heretofore awarded to the said plaintiff from said defendant Parker, and if paid by the said defendant Parker will satisfy this award made against the said defendants Parker and the said Riverside Heights Orange Growers' Association.

4. I find that the plaintiff is entitled to recover

from the defendants his costs and disbursements in this proceeding.

Respectfully submitted,

LYNN HELM,

Master.

(Pencil figures, etc., on inside of cover.)

[Endorsed]: C. C. 1562. In the District Court of the United States, Southern District of California, Southern Division. Fred Stebler, Complainant, vs. Riverside Heights Orange Growers' Association and George D. Parker, Defendants. In Equity. Cir. Ct. No. 1562. Master's Report. Filed Sep. 29, 1914, at 25 min, past 3 o'clock P. M. Lynn Helm, Referee. C. Meade, Clerk. F. R. Knox. Filed Oct. 3, 1914. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. Law Offices of Lynn Helm, 918 Title Insurance Building, Los Angeles, Cal.

(In pencil:) B. F. Bledsoe. [288]

United States District Court, Southern District of California, Southern Division.

IN EQUITY—CIR. CT. No. 1562.

FRED STEBLER,

Complainant,

vs.

RIVERSIDE HEIGHTS ORANGE GROWERS' ASSOCIATION, and GEORGE D. PARKER,

Defendants.

Complainant's Exceptions to the Report of the Special Master.

The exceptions taken by complainant to the Report of Lynn Helm, Esq., as Special Master, to whom this cause was referred by the Interlocutory Decree herein dated November 7th, 1913:

FIRST EXCEPTION: Complainant excepts to the finding, allowance or deduction of "overhead expense" of $4,120.05, or any other sum whatsoever, from the "gross profits" found to have been derived by the defendant Parker by the infringements covered by such report.

SECOND EXCEPTION: Complainant excepts to the conclusion and finding of the Master that the damage suffered by complainant by reason of loss of sales, due to the infringement herein, are to be measured, not by the sale as a whole as contracted for, but by simply the "sizers independent of the bins and distributing system."

THIRD EXCEPTION: Complainant excepts to the deduction of the sum of $815.85, or any other sum or amount whatsoever, as proportional "overhead expense" of complainant's grader or sizer [289] business; the Special Master should have found that any such "overhead expense" had been borne and paid by complainant and was lost to him; that complainant had suffered damage in that amount thereby, and any such "overhead expense" should not be deducted from the profits which would have accrued to complainant from the sales of the infringing machines and complainant had paid all the "overhead

expense'' of his business and the making and selling of such additional machines would have increased complainant's ''overhead expense'' of such business.

FOURTH EXCEPTION: Complainant excepts to the finding or conclusion of the Master that under the Interlocutory Decree herein, as construed by the Circuit Court of Appeals, complainant was not entitled to recover both the profits made by or accrued to the defendant Parker and the damage suffered by complainant; the Special Master should have found that complainant was entitled to both the profits and the damages.

FREDERICK S. LYON,
Solicitor and of Counsel for Complainant.

[Endorsed]: Cir. Ct. No. 1562. United States District Court, Southern District of California, Southern Division. Fred Stebler, Complainant, vs. Riverside Heights Orange Growers' Assn., and George D. Parker, Defendant. In Equity. Complainant's Exceptions to the Report of the Special Master. Filed Oct. 13, 1914. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. Frederick S. Lyon, 504–7 Merchants Trust Building, Los Angeles, Cal., Solicitor for Complainant. [290]

In the District Court of the United States, Southern District of California, Southern Division.

IN EQUITY—CIR. CT. No. 1562.

FRED STEBLER,

Complainant,

vs.

RIVERSIDE HEIGHTS ORANGE GROWERS' ASSOCIATION and GEORGE D. PARKER,

Defendants.

Exceptions to Master's Report.

MASTER'S REPORT.

Exceptions taken by the defendants herein to the report filed in this Honorable Court on the 2d day of October, 1914, by Lynn Helm, Esq., appointed Special Master of this court, to whom this cause was referred by an order of this Court made and entered on the 7th day of November, 1913, to take and state an account of the gains, profits and advantages which said above-named defendants and each of them have or has derived, received or made by reason of their infringement of the plaintiff's reissue letters patent No. 12,297, and to assess such damages against said defendants, and each of them, as plaintiff has sustained by reason of said infringement.

FIRST EXCEPTION: For that the said Master, in his said report on file herein, has found that since the date of the Interlocutory Decree entered in the above-entitled suit on the seventh day of November, 1913, one of the defendants herein, to wit,

George D. Parker, by the manufacture and sale of a differently constructed apparatus to the one adjudged to have infringed complainant's [291] reissue letters patent No. 12,297, has further infringed the plaintiff's said patented device, and found that for such new machines the said defendant—George D. Parker was liable unto the plaintiff for profits derived therefrom, and in addition thereto for damages unto the said complainant, whereas the said Master, under the evidence presented and in accordance with the law, should have found and reported unto this Honorable Court that the said device, specifically referred to on pages 3, 4, 5, 6, and 7 of the said report, so manufactured and sold by the said defendant—George D. Parker, since the said seventh day of November, 1913, was substantially a different machine from the Parker machine held by the Court herein to have been an infringement of the complainant's said patented device, and that the same was not and did not constitute an infringement of the said reissue letters patent No. 12,297, and should not have allowed any profits and damages unto the complainant by reason of the said manufacture and sale of the said new fruit grader so manufactured and sold by the defendant—George D. Parker, since the date of the said Interlocutory Decree herein.

SECOND EXCEPTION: For that the said Master, in his said report found that the plaintiff should recover from the defendant, George D. Parker, the sum of $5,232.85, as gains and profits, and an additional sum of $6,237.35 as damages, or a total amount of $11,470.20, as profits, gains and damages due unto the

plaintiff herein, whereas the Master should have found and reported the liability of the defendant unto the plaintiff limited to the gains, profits and damages found from the evidence herein resulting from the machines manufactured and sold by the defendant—George D. Parker, and held by the Court herein to have been an [292] infringement of the plaintiff's reissue letters patent No. 12,297.

RIVERSIDE HEIGHTS ORANGE GROWERS' ASSN.

GEORGE D. PARKER,

By N. A. ACKER,

Solicitor for Defendants.

[Endorsed]: C. C. No. 1562. U. S. District Court, Southern District of California, Southern Division. Fred Stebler, Complainant, vs. Riverside Heights Orange Growers' Association and George D. Parker, Defendants. Exceptions to Master's Report. Filed Oct. 20, 1914. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. Nicholas A. Acker, Attorney at Law, Foxcroft Building, 68 Post Street, San Francisco, Cal., for Defendants. [293]

In the District Court of the United States in and for the Southern District of California, Southern Division.

FRED STEBLER,

Complainant,

vs.

RIVERSIDE HEIGHTS ORANGE GROWERS' ASSOCIATION and GEORGE D. PARKER,

Defendants.

Memorandum Opinion.

This matter comes before the Court upon the exceptions taken by both complainant and defendants to the report of the Special Master herein.

All the exceptions have received my careful attention, but owing to other demands upon my time, it will have to suffice that I merely indicate my conclusions in very general language.

Both of the exceptions of the defendants referring to the question of the infringement by the defendants of the so-called modified Parker machine, in my judgment, are not sustained.

From a careful consideration of the decision of the Circuit Court of Appeals in 205 Federal, together with the description by the Master of the so-called modified Parker grader, the Court is of the opinion that the parts of the last-mentioned machine operate in substantially the same manner as to produce substantially the same result attained by plaintiff's invention, and that, as I understand it, is sufficient to justify, and in fact require, the Master to make a finding of infringement. Both of defendant's exceptions, therefore, are overruled.

Complainant's first exception, with respect to overhead expense allowed defendants is overruled. While the proof may not be as clear upon this point as the Court could well wish it were, nevertheless it is apparent that some considerable overhead expense resulting from the conduct of defendants' business must have inured to the benefit of the graders manufactured by him [294] and it would seem as if

the allowance made by the Master is a reasonable one, and one which, under the evidence, is fairly deducible therefrom.

The second exception presents more difficulty, and yet I am constrained to overrule it. *Prima facie,* as I understand it, the *quantum* of damages suffered by complainant would be determined by the actual loss occasioned to him because of his inability to make the sales of his patented device resulting from the sale of such device by the infringing defendants. That the patented device was but a member of a combination machine, so to speak, would not ordinarily entitle the complainant to a recovery by way of damages as for inability to manufacture and vend the combination machine *it* its entirety. Presumbaly his loss is the loss occasioned because of his inability to vend the patented article, and as I understand it, it is only in those instances in which it is impossible to apportion the actual loss that the Courts have permitted damages to be based upon a sale of a combination of elements. In this case it does appear, as clearly indicated by the Master, that the complainant sold his patented device, as differentiated from the fruit grader in its entirety, by itself, and for a certain fixed sum. In my judgment, this estops him now to claim that his damages should not be computed upon such selling price of the patented device by itself.

The third exception of complaint with reference to a proposed disallowance of overhead expense deducted from the manufacturing cost of his fruit sizers is overruled. Complainant's contention in this

behalf is that it would have cost him no more to have manufactured the graders made and sold by the defendants, and that his overhead expense would not have been increased at all thereby. This is equivalent in logic to saying that because a man has an established business he can do ten [295] times as much business as in fact he does do with no additional overhead expense. This is obviously a *non sequitur.* The disallowance as for overhead expense on part of complainant seems a reasonable one and justified by the facts.

Complainant in his fourth exception urges that under the rule of law as enunciated by the Circuit Court of Appeals, in its decision in this case on a former hearing, and which rule has become the law in the case, he is entitled to both damages and profits in a larger degree than as estimated by the Master. With this contention, I cannot agree. The decision of the Circuit Court of Appeals, to me, does not mean that complainant is entitled to anything in the way of relief other than that usually accorded in cases of this kind. I understand the general rule to be that upon an infringement being shown, the defendant will be required to divest himself of all profit he may have made because of such infringement, and that this profit inures to benefit of complainant. In addition, if such profit so inuring to complainant does not suffice to recompense complainant for all damage he may have suffered, he will be entitled to a judgment for damages for the difference. This, substantially, *it* what was done by the Master. It does appear that after the decision in this case heretofore,

and after the injunction herein had issued, the defendant continued to go ahead and make and vend machines, which infringed the invention of the complainant. In my judgment, an award sufficient merely to compensate the complainant for the damage suffered by him because of this wilful infringement, does not meet the equities of the case, and I think, under the authority granted by Section 4919, Revised Statutes, and increase in damages should be allowed. The proof shows that defendant Parker has made and sold twenty of the infringing machines since the issuance of the injunction herein, and that the damages occasioned to the complainant by reason thereof, computed according to the Master's schedule amounts to $2,340.20. I do not conceive that [296] the circumstances are of the most aggravated character, and in consequence, feel that a doubling of the damages last mentioned will suffice to meet all the requirements of the case.

The report of the Special Master is thereof approved in its entirety. His allowance of damages and profits to complainant in the sum of $11,470.20 is confirmed, and in addition, judgment will be awarded against the defendant Parker for $2,340.20, because of the infringement occurring after the making of the injunction order herein. Complainant's counsel will prepare a decree in accord with the views herein expressed.

BLEDSOE,
Judge.

October 25th, 1915.

[Endorsed]: C. C. No. 1562. In the District Court of the United States for the Southern District of California. Fred Stebler vs. Riverside Heights Orange Growers' Assn. and George D. Parker. Filed Oct. 25, 1915. Wm. M. Van Dyke, Clerk. T. F. Green, Deputy. [297]

[Minutes of Court, — October 25, 1915 — Order Confirming Report of Special Master, etc.]

At a stated term, to wit, the July term, A. D. 1915, of the District Court of the United States of America, in and for the Southern District of California, Southern Division, held at the court-room thereof, in the city of Los Angeles, on Monday, the twenty-fifth day of October, in the year of our Lord one thousand nine hundred and fifteen. Present: The Honorable BENJAMIN F. BLEDSOE, District Judge.

C. C. No. 1562.

FRED STEBLER,

Complainant,

vs.

RIVERSIDE HEIGHTS ORANGE GROWERS' ASSOCIATION, and GEORGE D. PARKER,

Defendants.

This cause having heretofore been submitted to the Court for its consideration and decision on an application for the confirmation of the report of the Special Master, and also upon exceptions taken by both

complainant and defendants to said report; the Court, having duly considered the same and being fully advised in the premises, now hands down an opinion, and it is in accordance therewith ordered that the report of the Special Master be, and the same hereby is approved in its entirety, and it is further ordered that the allowance by said Special Master of damages and profits to complainant in the sum of $11,470.20, be, and the same hereby is confirmed, and it is further ordered that, in addition thereto, there be awarded the complainant against defendant George D. Parker judgment for $2,340.20 because of infringement occurring after the making of the injunction order herein. **[298]**

[Endorsed]: C. C. No. 1562. United States District Court, Southern District of California, Southern Division. Fred Stebler, Complainant, vs. Riverside Heights Orange Growers' Association and George D. Parker, Defendants. Copy of Minute Order. Filed Oct. 30, 1915. Wm. M. Van Dyke, Clerk. By Leslie S. Colyer, Deputy Clerk. **[299]**

[Final Decree.]

United States District Court, Southern District of California, Southern Division.

IN EQUITY–CIR. CT. No. 1562.

FRED STEBLER,

Complainant,

vs.

RIVERSIDE HEIGHTS ORANGE GROWERS' ASSOCIATION, and GEORGE D. PARKER,

Defendants.

This cause having come on to be heard upon the report of Lynn Helm, Esq., as Special Master, which report is dated September 29, 1914, and also upon exceptions taken to said report on the part of complainant and also on the part of defendants and having been argued by Frederick S. Lyon, Esq., on behalf of complainant and N. A. Acker, Esq., upon behalf of defendants;

First. It is ordered, adjudged and decreed that the defendants Riverside Heights Orange Growers' Association and George D. Parker jointly and severally, pay to complainant, Fred Stebler, the sum of Six Hundred and Twenty-nine Dollars and Fifty-two Cents ($629.52), which is the amount found by the Special Master as stated in his report above referred to to be due from said defendants jointly as damages from the said defendants to the said complainant.

Second. It is further ordered, adjudged and decreed that the defendant, George D. Parker, further pay to complainant Fred Stebler, the sum of Fourteen Thousand and Fifty-three Dollars [300] and Eight Cents ($14,053.08), which is the amount found by the Special Master as stated in his above report referred to to be due from the defendant, George D. Parker, individually, to complainant as profits and damages respectively including the allowance of Two Thousand Three Hundred and Forty Dollars and Twenty Cents ($2,340.20) damages allowed by the Court as increase of damages in view of willful infringement.

Third. It is further ordered, adjudged and de-

creed that The United States Fidelity and Guaranty Company, surety, on the bond of the defendants, pay to complainant the sum of Ten Thousand Dollars ($10,000), the amount of the penalty or obligation of its said bond, and that when so paid by said The United States Fidelity and Guaranty Company as surety, such payment be applied in partial satisfaction of the aforesaid judgments against defendants.

Fourth. It is further ordered, adjudged and decreed that defendants and each of them pay to complainant, Fred Stebler, the sum of 805.35 Dollars, complainant's costs and disbursements herein, including in such costs and disbursements the Master's fee as heretofore fixed and allowed by the Court.

By the Court.
BENJAMIN F. BLEDSOE,
District Judge.

Dated October 30, 1915.

Decree presented, signed and filed and recorded.
WM. M. VAN DYKE,
Clerk.
By T. F. Green,
Deputy Clerk. [301]

[Endorsed]: C. C. No. 1562. United States District Court, Southern District of California, Southern Division. Fred Stebler, Complainant vs. Riverside Heights Orange Growers' Association and George D. Parker, Defendants. In Equity. Final Decree. Filed Oct. 30, 1915. Wm. M. Van Dyke, Clerk. By T. F. Green, Deputy Clerk. Frederick S. Lyon, 504–7 Merchants Trust Building, Los Angeles, Cal., Counsel for Complainant.

[Enrolled Papers Endorsed]: C. C. No. 1562. In the District Court of the United States, for the Southern District of California, Southern Division. Fred Stebler vs. Riverside Heights Orange Growers' Assn. et al. Enrolled Papers. Filed Oct. 30, 1915. Wm. M. Van Dyke, Clerk. By Leslie S. Colyer, Deputy Clerk. [302]

MEMORANDUM.

This satisfaction of judgment appears in the margin, at the end of the Final Decree entered on page 76 of the Equity Journal, Southern Division, Volume 3:

"Received full and entire satisfaction on the within judgments this 8th day of November, 1915, as to George D. Parker, Riverside Heights Orange Growers' Association and United States Fidelity & Guaranty Co.

FREDERICK S. LYON,
Solicitor for Complainant.

Witnesses:

WM. M. VAN DYKE,
Clerk,
By R. S. Zimmerman,
Deputy." [303]

United States District Court, Southern District of of California, Southern Division.

IN EQUITY–CIR. CT. No. 1562.

FRED STEBLER,

Complainant,

vs.

RIVERSIDE HEIGHTS ORANGE GROWERS' ASSOCIATION, and GEORGE D. PARKER,

Defendants.

Petition for Order Allowing Appeal.

The defendants, Riverside Heights Orange Growers' Association and George D. Parker, conceiving themselves aggrieved by the Final Order of Decree made and entered by said Court in the above-entitled cause on October 30th, 1915, affirming the Master's Report and granting judgment thereon as in said Decree set forth, come now, by their counsel, and petition said Court for an order allowing them to prosecute an appeal from said decree granting, allowing and affirming the Master's report and granting judgment thereon, to the Honorable, the United States Circuit Court of Appeals for the Ninth Circuit, under and according to the laws of the United States in that behalf made and provided; and also that an order be made fixing the sum of security which the plaintiffs shall give and furnish upon such appeal.

And your petitioners will ever pray.

N. A. ACKER,

Solicitor and of Counsel for Defendants. **[304]**

[Endorsed]: C. C. No. 1562. U. S. District Court, Southern District of California, Southern Division. Fred Stebler, Complainant, vs. Riverside Heights Orange Growers' Association, and George D. Parker, Defendants. Petition for Order Allowing Appeal. Filed Nov. 29, 1915. Wm. M. Van Dyke, Clerk. By Leslie S. Colyer, Deputy Clerk. Nicholas A. Acker, Attorney at Law, Foxcroft Building, 68 Post Street, San Francisco, Cal., for Defendants. [305]

United States District Court, Southern District of California, Southern Division.

IN EQUITY—CIR. CT. No. 1562.

FRED STEBLER,

Complainant,

vs.

RIVERSIDE HEIGHTS ORANGE GROWERS' ASSOCIATION and GEORGE D. PARKER,

Defendants.

Assignment of Errors.

Comes now the defendants, Riverside Heights Orange Growers' Association and George D. Parker, above-named defendants, and specify and assign the following as the errors upon which they will rely upon their appeal to the United States Circuit Court of Appeals for the Ninth Circuit, from the Final Decree entered in the above-entitled suit on the 30th day of October, 1915, affirming the Master's Report and granting, allowing and awarding judgment

against the defendants herein as set forth in the said Decree.

That said District Court of the United States in and for the Southern District of California, Southern *District,* erred as follows:

1. In refusing to sustain defendants' exceptions to the Master's report referring to the question of infringement of the so-called modified Parker machine.

2. In allowing the complainant damages in excess of nominal damages.

3. In allowing the complainant a sum greater **[306]** than the profits derived by the defendants from the infringing machines.

4. In sustaining and approving the Special Master's report in its entirety.

5. In awarding unto the complainant judgment for the sum of $2,340.20 in addition to the sum of $11,470.20, found by the Special Master to be due unto the complainant as combined damages and profits.

6. In holding the so-called Parker modified machine to be an infringement of complainant's patent.

7. In holding that the Special Master was justified or required to make a finding of infringement with *regard the* so-called modified Parker Grader.

In order that the foregoing Assignment of Errors may be and appear of record the defendants' present the same to the Court and pray that such disposition may be made thereof as is in accordance with the laws of the United States made and provided.

Wherefore, the said defendants pray that said

final Decree and Order of October 30th, 1915, in said cause against the defendants be reversed, and that the United States District Court for the Southern District of California, Southern Division, be directed to enter an order setting aside the said decree, and that the defendants have and recover of plaintiff their costs and disbursements herein.

All of which is respectfully submitted.

N. A. ACKER,
Solicitor and of Counsel for Defts.

[Endorsed]: C. C. No. 1562. U. S. District Court, Southern District of California, Southern Division. Fred Stebler, Complainant, vs. Riverside Heights Orange Growers' Association and George D. Parker, Defendants. Assignment of Errors. Filed Nov. 29, 1915. Wm. M. Van Dyke, Clerk. By Leslie S. Colyer, Deputy Clerk. Nicholas A. Acker, Attorney at Law, Foxcroft Building, 68 Post Street, San Francisco, Cal., for Defendants. **[307]**

United States District Court, Southern District of California, Southern Division.

IN EQUITY—CIR. CT. No. 1562.

FRED STEBLER,

Complainant,

vs.

RIVERSIDE HEIGHTS ORANGE GROWERS' ASSOCIATION and GEORGE D. PARKER,

Defendants.

Order Allowing Appeal.

At a stated term, to wit, the July term, A. D. 1915, of the United States District Court, Southern District of California, Southern Division, held at the courtroom of said court in the city of Los Angeles, County of Los Angeles, on the 29th day of November, 1915.

Present: The Honorable OSCAR A. TRIPPET, United States District Judge for the Southern District of California, Southern Division, sitting in equity.

On motion of Nicholas A. Acker, Esq., solicitor and of counsel for defendants, it is ordered that an appeal to the United States Circuit Court of Appeals for the Ninth Circuit as prayed for in the Petition for Order Allowing Appeal from the final decree heretofore filed and entered, affirming the Master's Report and granting Judgment thereon as set forth in said Decree herein, be, and the same is hereby granted.

It is further ordered that the bond on appeal be fixed at the sum of Five Hundred Dollars, the same to act as bond for cost.

OSCAR A. TRIPPET,
District Judge.

Dated Nov. 29, 1915. **[308]**

[Endorsed]: C. C. No. 1562. U. S. District Court, Southern District of California, Southern Division. Fred Stebler, Complainant, vs. Riverside Heights Orange Growers' Association and George D. Parker, Defendants. Order Allowing Appeal. Filed Nov.

29, 1915. Wm. M. Van Dyke, Clerk. By Leslie S. Colyer, Deputy Clerk. Nicholas A. Acker, Attorney at Law, Foxcroft Building, 68 Post Street, San Francisco, Cal., for Defendants. **[309]**

United States District Court, Southern District of California, Southern Division.

IN EQUITY—CIR. CT. #1562.

FRED STEBLER,

Plaintiff,

vs.

RIVERSIDE HEIGHTS ORANGE GROWERS' ASSOCIATION and GEORGE D. PARKER,

Defendants.

Bond on Appeal.

KNOW ALL MEN BY THESE PRESENTS, That the Fidelity & Deposit Company of Maryland, a corporation organized and existing under and by virtue of the laws of the State of Maryland, and duly licensed to transact business in the State of California is held and firmly bound unto Fred Stebler, plaintiff in the above-entitled suit, in the penal sum of Five Hundred Dollars ($500) to be paid to the said Fred Stebler, his heirs, assigns and legal representatives, for which payment, well and truly to be made, the Fidelity & Deposit Company of Maryland, binds itself, its successors, and assigns firmly by these presents.

Sealed with corporate seal and dated this 20th day of December, 1915.

The condition of the above obligation is such that whereas the said Riverside Heights Orange Growers' Association and George D. Parker, defendants in the above-entitled suit, are about to take an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, to reverse the final order or decree made, rendered and entered on the 30th day of October, 1915, by the District Court of the United States, for the **[310]** Southern District of California, Southern Division, in the above-entitled cause by the said Court affirming the Master's Report on accounting had in the above-entitled suit.

NOW, THEREFORE, the condition of the above obligation is such that if the above-named defendants shall prosecute their said appeal to effect and answer all costs which may be adjudged against them if they fail to make good their appeal, this obligation shall be void; otherwise to remain in full force and effect.

FIDELITY AND DEPOSIT COMPANY OF MARYLAND.

[Seal] By J. HOMER NISHWITZ,
Attorney in Fact.
Attest: JOE CRIDER, Jr.,
Agent.

Approved 12/20/15.

TRIPPET,
District Judge.

State of California,
County of Los Angeles,—ss.

On this 20th day of December, 1915, before me, C. M. Evarts, a notary public in and for the said county

of Los Angeles, State of California, residing therein, duly commissioned and sworn, personally appeared J. Homer Nishwitz, known to me to be the attorney in fact, and Joe Crider, Jr., known to me to be the agent of the Fidelity and Deposit Company of Maryland, the corporation that executed the within instrument, and acknowledged to me that they subscribed the name of the Fidelity and Deposit Company of Maryland thereto and their own names as attorney in fact and agent, respectively.

[Seal] C. M. EVARTS,
Notary Public in and for the County of Los Angeles, State of California. **[311]**

[Endorsed]: C. C. No. 1562. U. S. District Court, Southern District of California, Southern Division. Fred Stebler, Plaintiff, vs. Riverside Heights Orange Growers' Association, and George D. Parker, Defendants. Bond on Appeal. Filed Dec. 20, 1915. Wm. M. Van Dyke, Clerk. By Leslie S. Colyer, Deputy Clerk. Nicholas A. Acker, Attorney at Law, Foxcroft Building, 68 Post Street, San Francisco, Cal., for Defendants. **[312]**

UNITED STATES OF AMERICA,

District Court of the United States, Southern District of California, Southern Division.

Clerk's Office.

IN EQUITY—CIR. CT., No. 1562.

FRED STEBLER,

Complainant,

vs.

RIVERSIDE HEIGHTS ORANGE GROWERS' ASSOCIATION and GEORGE D. PARKER,

Defendants.

Praecipe [for Transcript of Record].

To the Clerk of Said Court:

Sir: Please prepare as a transcript of record on the Appeal in this suit by defendants from the Order or Decree of October 30th, 1915, a copy of each of the following, and duly certify the same as transcript on appeal, in accordance with the Equity Rules of the Supreme Court of the United States: The Bill of Complaint. The Answer of Defendants. Decree of Lower Court Dismissing Bill. Decision of the Circuit Court of Appeals Reversing the Lower Court. Interlocutory Decree in Conformity with the Decision of the Circuit Court of Appeals. Testimony Given Before the Master on Accounting. Exceptions of Defendants to the Master's Report on Accounting. Report of the Special Master on Accounting. Exceptions of the Complainant to the Master's Report. Opinion of the Court Affirming

the Master's Report on Accounting. Final Decree Affirming the Master's Report, Granting, Allowing and Awarding Judgment. Satisfaction of Judgment. Petition for Order Allowing Appeal from Final Decree. Assignment of Errors. Order Allowing Appeal. Bond on Appeal. Citation.

N. A. ACKER,
Sol. for Defendants.

[Endorsed]: C. C. No. 1562. U. S. District Court, Southern District of California, Southern Division. Fred Stebler, Complainant, vs. Riverside Heights Orange Growers' Association and George D. Parker, Defendants. Praecipe for Transcript on Appeal. Filed Dec. 27, 1915. Wm. M. Van Dyke, Clerk. By Leslie S. Colyer, Deputy Clerk. **[313]**

[Certificate of Clerk, U. S. District Court, to Transcript of Record.]

In the District Court of the United States, in and for the Southern District of California, Southern Division.

C. C. 1562.

FRED STEBLER,
Complainant,

vs.

RIVERSIDE HEIGHTS ORANGE GROWERS' ASSOCIATION, GEORGE D. PARKER and PARKER MACHINE WORKS,
Defendants.

I, Wm. M. Van Dyke, Clerk of the District Court of the United States of America, in and for the

Southern District of California, do hereby certify the foregoing three hundred and thirteen (313) typewritten pages, numbered from 1 to 313, inclusive, to be a full, true and correct copy of Bill of Complaint, Answer, Final Decree, Mandate of the Circuit Court of Appeals Reversing the Lower Court, Interlocutory Decree in Conformity with Mandate of the Circuit Court of Appeals, with Notice of Motion for Presentation and Signing of Decree Attached, Testimony and Proceedings Before Special Master on Accounting, and Exhibits Filed by Special Master, Report of Special Master on Accounting, Complainant's Exceptions to Report of Special Master, Defendants' Exceptions to Report of Special Master, Opinion of Court Affirming Report of Special Master, Minute Order of Court Affirming Report of Special Master, Final Decree **[314]** Affirming Report of Special Master, Satisfaction of Judgment, Petition for Order Allowing Appeal, Assignment of Errors, Order Allowing Appeal, Bond on Appeal, and Praecipe for Transcript on Appeal, in the above and therein entitled cause, and that the same together constitute the Transcript upon Appeal of the Riverside Heights Orange Growers' Association and George D. Parker in accordance with the Praecipe for Preparation of Transcript filed in my office on behalf of the appellants by their solicitor of record.

I do further certify that the cost of the foregoing Transcript on Appeal is $168.30, the amount whereof has been paid me by said appellants.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said District Court of the United States of America, in and for the Southern District of California, Southern Division, this 28th day of March, in the year of our Lord, one thousand nine hundred and sixteen, and of our Independence, the one hundred and fortieth.

[Seal] WM. M. VAN DYKE,

Clerk of the District Court of the United States of America, in and for the Southern District of California.

By Leslie S. Colyer,
Deputy Clerk. **[315]**

[Ten Cent Internal Revenue Stamp. Canceled 3/28/16. L. S. C.]

[Endorsed]: No. 2772. United States Circuit Court of Appeals for the Ninth Circuit. Riverside Heights Orange Growers' Association, a Corporation, and George D. Parker, Appellants, vs. Fred Stebler, Appellee. Transcript of Record. Upon Appeal from the United States District Court for the Southern District of California, Southern Division.

Filed March 30, 1916.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

[Order Under Rule 16 Enlarging Time to March 31, 1916, to File Record and Docket Cause.]

In the United States Circuit Court of Appeals, Ninth Judicial Circuit.

RIVERSIDE HEIGHTS ORANGE GROWERS' ASSOCIATION and GEORGE D. PARKER,
Appellants,

vs.

FRED STEBLER,
Appellee.

Good cause appearing therefor, it is hereby ordered, that the time heretofore allowed said appellants to docket said cause and file the record thereof with the clerk of the United States Circuit Court of Appeals for the Ninth Circuit, be, and the same is hereby enlarged and extended to and including the 31st day of March, 1916.

Dated at Los Angeles, January 27th, 1916.

BLEDSOE,
U. S. District Judge, Southern District of California.

[Endorsed]: No. 2772. United States Circuit Court of Appeals for the Ninth Circuit. Order Under Rule 16 Enlarging Time to Mar. 31, 1916, to File Record Thereof and to Docket Case. Filed Jan. 27, 1916. F. D. Monckton, Clerk. Refiled Mar. 30, 1916. F. D. Monckton, Clerk.